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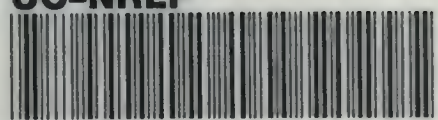
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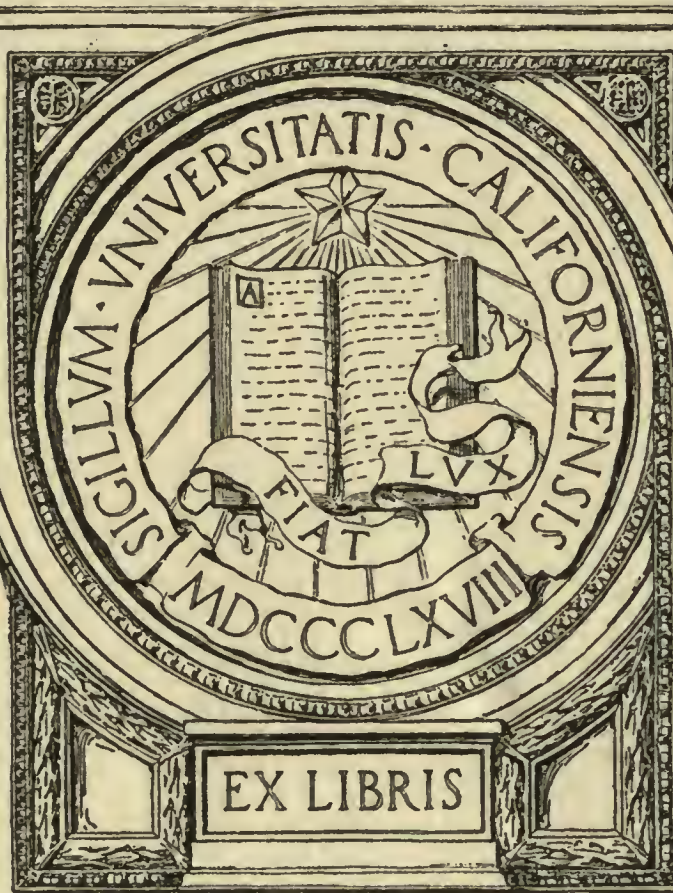
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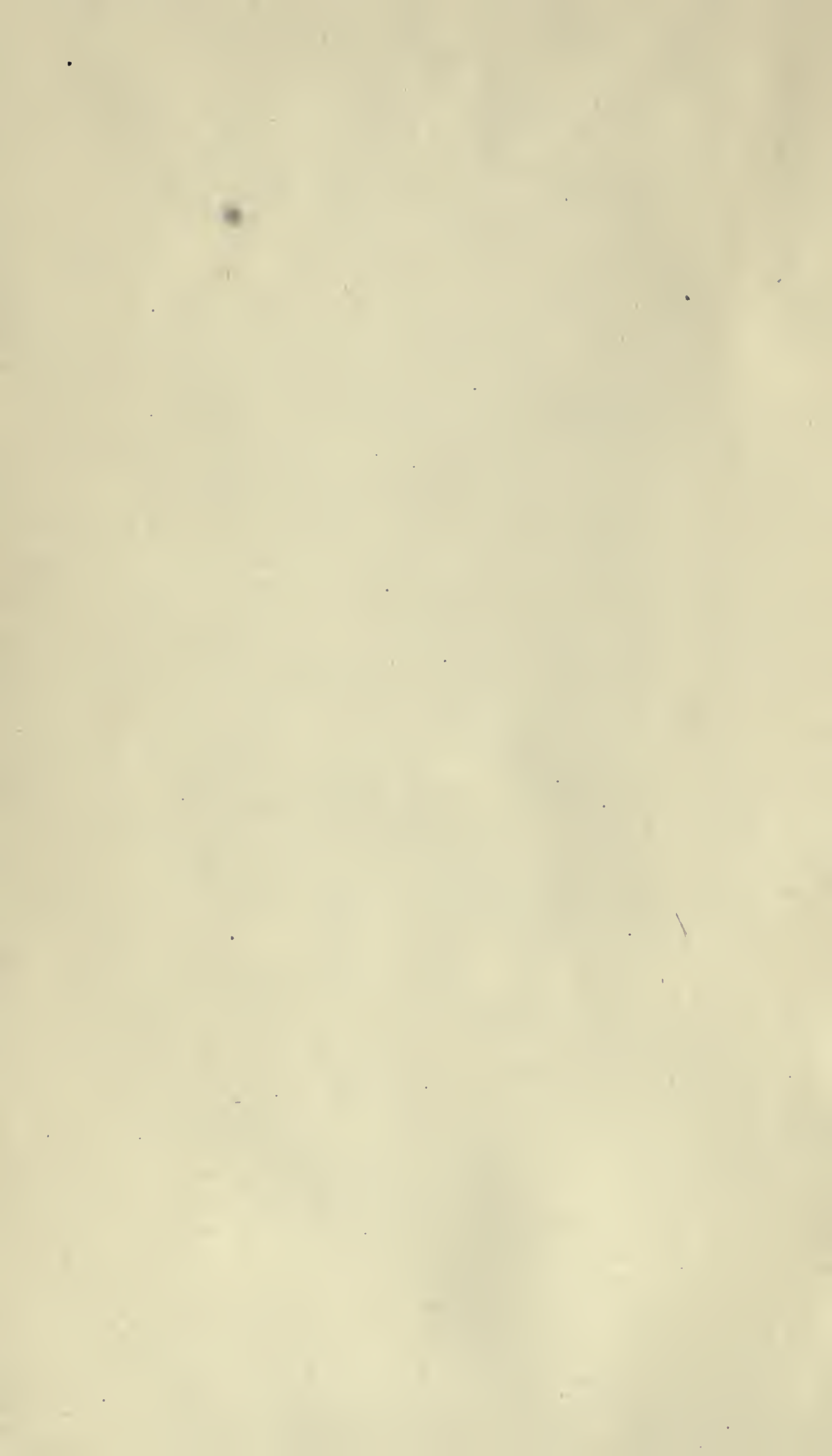
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Report of Committee
to
National Metal Trades Association



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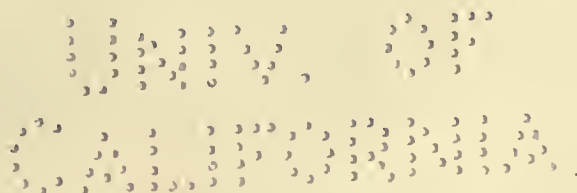


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Report of Committee
on
Employers' Liability
Insurance

*To Thirteenth Annual
Convention
National Metal Trades Association*



*New York City
April 12 and 13, 1911*

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We, the Committee on Employers' Liability Insurance,
respectfully submit the following report for your consideration.

WILLIAM BUTTERWORTH, Chairman
Deere & Co., Moline, Ill.

GEO. F. STEEDMAN
Curtis & Co. Mfg. Co., St. Louis

HENRY D. SHARPE
Brown & Sharpe Mfg. Co.,
Providence, R. I.

COMMITTEE



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To Members of National Metal Trades Association.

GENTLEMEN:

While the question of systematic compensation for industrial accidents has been the subject of consideration and legislative action by most civilized states since 1884 when the matter was first treated by Germany, the subject but recently has been under consideration in the United States. At the present time systematic compensation is widely discussed, and has been or is being investigated by Commissions in Wisconsin, New York, Minnesota, Ohio, Massachusetts, New Jersey and Illinois, and by labor bureaus, trade unions, and other organizations.

Although the subject of systematic compensation has attracted little attention in this country until quite recently, the subject of the legal relation of Employer and Employee, or Master and Servant, has not escaped attention in this country. All legislation, however, either federal or state, excepting as hereinafter noted, has been directed along two lines, viz:

(a) Legislation requiring safety appliances for the protection of the Employee, or requiring regulations, sanitary or otherwise, to improve the working conditions of the Servant and to safeguard his health.

(b) Legislation modifying the existing rules of law with reference to the liability of the Master for injuries to his Servant.

In addition to the consideration of the subject which has been given by legislative bodies, in more recent years, many employers of labor have given the question careful study and deep thought with the result that in numerous instances, either through voluntary arrangement on the part of the employer or by co-operation between the employer and employee, benefit systems have been established by means of which some compensation is made, out of a special fund, in case of the injury or death of an employee, without regard to negligence on the part of the employer as the basis of the right to compensation.

The present system of compensation for industrial accidents is now conceded to be unjust, inadequate, unsatisfactory and wasteful. It is proper, therefore, to consider what the present

system is and then to consider and suggest a remedy which will be equitable and just both to the employer of labor and his employe.

RELATION OF MASTER AND SERVANT

Under the law, the liability of the master for injury to his servant and the right of the servant for compensation for his injury is found in the common law, except so far as the common law has been modified by some recent legislation directed especially to the safeguarding of employes, in certain industries, or to the certain modification of rules of practice by which the remedy is applied in the courts.

The legislature of Illinois in 1874 provided by statute that "the common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British parliament made in aid thereof, and to supply the defects of the common law * * * and which are of a general nature and not local to that kingdom shall be the rule of decision, and shall be considered of full force until repealed by legislative authority."

One of the "defects" of the common law, early to be recognized, both in England and in this country, was the fact that where injuries resulted in death no right of action therefor survived to the widow, next of kin or the legal representative of the decedent, and so now in this state by statute it is provided that in such cases the right of action shall survive to the legal representative of the decedent for the benefit of the widow and next of kin. Like legislation has been enacted in every state in the union.

The sole right which the employe has to compensation from his employer for his injury under the law of this state is that which is given him by the common law, with the single exception found in the act relating to mines and mining, and no other remedy in case of accident resulting in death is afforded save under the statutes above mentioned.

Under the common law (which is found only in the decisions of the courts), and under the statutes above mentioned, the liability of the employer for injury to his employe, and the right

of the employe for compensation for such injury are controlled by certain rules which in substance are as follows:—

The contract of employment whether oral or written carries with it these obligations:—

On the part of the employer that he will use due care to furnish to the employe—

- (a) a safe place to work,
- (b) safe machinery, tools or appliances with which to work,
- (c) reasonably competent servants to assist in the work,

and that upon default of the employer in the observance of any one of the duties enumerated above, injury therefrom resulting to the servant, while the servant was himself in the exercise of due care for his own safety, compensation shall be made to the servant by the employer for such injury.

On the part of the employe or servant, the contract implies that he will assume the ordinary risks incident to the service which he engages to perform, including risk of injury from the negligence of his fellow servants, and that he himself will use reasonable care to avoid injury.

It will be observed from the brief summary above that the sole basis of recovery by the servant for injuries received is the negligence of the master in failure in one of the duties on his part incident to the contract of hiring.

It will also be observed from the summary that it is not universally true that where the master is guilty of negligence the servant can recover compensation, for, if the master be guilty of negligence, and at the time of the injury to the servant he himself was not in the exercise of due care for his own safety (such care as an ordinarily prudent man would exercise for his own safety under the same or like circumstances), or was guilty himself of negligence, and such want of due care, or his own negligence contributed in the slightest degree to the injury, the servant forfeits his right to compensation to the master, notwithstanding the master's negligence.

The usual defenses available to the master to defeat the claims of the servant for injury alleged to result from the master's negligence are:—

- (1) That the injury was the result of the negligence of a fellow servant,
- (2) That the injury was one of the risks which the servant had assumed as incident to the employment,
- (3) That the servant was not in the exercise of due care or was guilty of contributory negligence.

These defenses have come commonly to be called “the fellow servant rule,” “assumption of risk” and “contributory negligence.”

While it would appear from the above brief statement that the determination of the rights of the servant and the liability of the master was a comparatively simple process, the contrary is unfortunately the case. The application of the law involves the consideration of questions of both law and fact which has unavoidably resulted in great confusion to the end that neither party to a controversy is able to foretell the outcome of a lawsuit involving his right to recovery or liability for damages.

THE FELLOW SERVANT RULE

Without going into a minute discussion of the development of “the fellow servant rule” it appears that this doctrine had its first application in England in 1837 in the case of *Priestly v. Fowler* in the English Court of Exchequer.

The case involved the liability of the master, who was a butcher, for damages to his servant, by reason of his injury in unloading a wagon which had been carelessly and improperly loaded by another servant of the master. In deciding this case, Lord Abinger said:—

It is admitted that there is no precedent for the present action by a servant against a master. We are, therefore, to decide the question upon general principles, and in doing so we are at liberty to look at the consequences of a decision the one way or the other.

If the master be liable to the servant in this action the principle of that liability will be found to carry us to an alarming extent. He who is responsible by his general duty, or by the terms of his contract for all the consequences of negligence in a matter in which he is the principal, is responsible for the negligence of all his inferior agents. If the owner of the carriage is therefore responsible for the sufficiency of his carriage to his servant, he is responsible for the negligence of his coachmaker, or his harnessmaker or his coachman. The footman, therefore, who rides behind the carriage, may have an action against his master for a defect in the carriage, owing to the negligence of the coachmaker, or for a defect in the harness, arising from the negligence of the harnessmaker, or for drunkenness, negligence or want of skill in the coachman; nor, is there any reason why that principle should not, if applicable in this class of events, extend to many others. The master, for example, would be liable to the servant for the negligence of the chambermaid for putting him into a damp bed; for that of the upholsterer for sending him a crazy bedstead, whereby he was made to fall down while asleep and injure himself; for the negligence of the cook in not properly cleaning the copper vessels used in the kitchen; of the butcher, in supplying the family with meat of a quality injurious to the health; of a builder for a defect in the foundation of the house, whereby it fell and injured both the master and the servant by the ruins.

The inconvenience, not to say the absurdity of these consequences afford a sufficient argument against the application of this principle to the present case. But, in truth, the mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself. He is no doubt bound to provide for the safety of his servant, in the course of his employment, to the best of his judgment, information and belief. The servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself; and in most of the cases in which danger may be incurred, if not all, he is just as likely to be acquainted with the probability and extent of it as the master.

The doctrine thus announced in this case is much broader than that which is recognized as the law in this state (Illinois).

The law has been so modified that in order that the master be relieved from liability for the injury of one servant by reason of the negligence of another servant the two servants must at the time of the injury have been directly co-operating with each other in the same line of employment, and their duties must have been such as to bring them into habitual association, so that they might exercise a mutual influence upon each other promotive of proper caution.

This rule, however, cannot be invoked in defense of the master where the negligence charged is a violation of his duty to use due care to furnish a reasonably competent servant to assist in the work. In other words, the master cannot negligently employ an incompetent servant and then claim immunity from liability for the incompetent servant's negligence under "the fellow servant rule."

It is also firmly established in the law that the master will obtain no relief from liability under "the fellow servant rule" where the injury is the result of any negligence on the part of the master by reason of his default in any of his duties to the servant implied in the contract of employment even though the negligence of the fellow servant may have contributed to the injury.

ASSUMPTION OF RISK

The principle of "the assumption of risk" as recognized by the law is that every risk which an employment still involves after a master has performed his full duty to his servant is assumed as a matter of law, by each of those servants. The risks which are thus considered to have been assumed are those which are commonly described as "ordinary." It is the settled doctrine of the law that the servant may reasonably be presumed to foresee that he will be exposed to the ordinary risks of the business in which he engages, but that he ought not to be charged with anticipating the consequences of risks of an extraordinary character. Ordinary risks and hazards of the employment have been defined by our Supreme Court to be such risks as are usual

and ordinary therein after the employer has taken reasonable care to discover and prevent such risks.

It will be observed that the defense under "the fellow servant rule" is really within the scope of and embraced within "the assumption of risk rule," injury from the negligence of a fellow servant being one of the ordinary risks of an employment which the servant impliedly assumes.

CONTRIBUTORY NEGLIGENCE

Under the law, as it is in Illinois today, the obligation devolves upon the servant in every suit for damages for personal injuries to allege in his declaration, and also to prove by the evidence, that the master was guilty of a specific act of negligence, and also that at the time of the injury he himself was in the exercise of due or ordinary care for his own safety, as defined above.

If it should appear from the evidence that at the time of the injury, although the master was guilty of the negligence as charged, the servant was not in the exercise of that degree of care for his own safety which an ordinarily prudent person under the same or like circumstances would exercise, or that he was in fact guilty of some act of negligence, which want of care or act of negligence contributed to the injury in the least degree, the servant cannot recover for the injury received.

The above has been the rule of law with reference to contributory negligence since 1885 when the Supreme Court of Illinois departed from the earlier decisions recognizing the doctrine of "comparative negligence."

COMPARATIVE NEGLIGENCE

What is meant by "comparative negligence" may be gathered from one of the earliest cases in Illinois in which it was defined and applied:—

Mr. Justice Breese in the case of *Galena & C. U. R. Co. v. Jacobs*, 20 Ill. 478 (1858) stated the rule as follows:—

The question of liability does not depend absolutely on the absence of all negligence on the part of the plaintiff, but upon the relative degree of care or want of care, as manifested by both parties, for all

care or negligence is at best but relative, the absence of the highest possible degree of care showing the presence of some negligence, slight as it may be. The true doctrine, therefore, we think is, that in proportion to the negligence of the defendant, should be measured the degree of care required of the plaintiff—that is to say, the more gross the negligence manifested by the defendant, the less degree of care will be required of the plaintiff to enable him to recover.

The doctrine had been previously recognized and applied in Illinois in the same year in the case of *C. & R. I. Co. v. Still*, 19 Ill. 499.

After the decision in these cases “the comparative negligence rule” continued to form a part of the law of Illinois until the decision in the case of *Calumet Iron & Steel Co. v. Martin*, 115 Ill. 358 (1885), when the Supreme Court after a careful review of the previous authorities receded from the position formerly maintained by holding that the authors of the earlier decisions had no intention of announcing any other rule than that the servant must exercise ordinary care. To quote from the decision in the last named case, the court says:—

Within the contemplation of that rule, where one has observed ordinary care with reference to the particular circumstances involved for his personal safety, he has, even if slightly negligent, observed all the care the law requires of him; and where, having observed this care, he is injured by the negligence of another, that other has been guilty of the degree of negligence for which the law charges responsibility.

It has been said that the application of “the comparative negligence rule” to the particular case afforded an opportunity to the court to mitigate in part the harshness of the rules relating to “contributory negligence,” and made it generally necessary to submit the question to the jury to determine the relative degree of negligence of the master and his servant. The rule was therefore a favorable one for the servant in its particular operation, although there is very little difference, as an abstract proposition of law, between the slight negligence permitted to the servant under “the comparative negligence rule,” and the ordinary care required of him under the present rule.

It seems to us that it should make very little difference to the servant whether in his controversy with the master the rule were applied as stated in the earlier decisions, permitting him to recover though guilty of slight negligence, the jury indulging for that purpose in a comparison of the negligence of the master with his negligence, or the modern rule were applied that the servant could not recover unless at the time of the injury the servant was in the exercise of such a degree of care for his own safety as an ordinarily prudent man would exercise *under the circumstances then existing*, because the qualification of the modern rule *under the circumstances then existing* requires the jury in passing upon the question as one of fact and the court in passing upon it as one of the law to keep in mind all the circumstances then existing, *including the negligent act of the master* and to receive the matter on the basis of the degree of care an ordinarily prudent man would have exercised under those circumstances.

The attempt to administer the law under the earlier rule had been unsatisfactory because of the obvious impossibility justly to compare negligence against negligence, and to off-set one negligent act against another negligent act and to apportion damages accordingly. The modern rule, in the opinion of your committee, has had the desired effect of simplifying the consideration by courts and juries of the question of want of due care or contributory negligence in affecting the right to recovery.

Notwithstanding the attempt of the court to assist in the administration of justice in adopting a more lucid and rational rule, the question of want of due care or of contributory negligence is still one of great uncertainty in its practical application to a given state of facts for the reason that courts and juries are composed of men, and minds of men may differ.

The substance of the matter is that while we have now a rule of law which is as succinct and concrete a statement as has yet been devised, the question of due care or of contributory negligence in any given case is not thereby settled beyond all controversy, so that those interested can conclusively determine the matter for themselves because the question must be submitted in the first instance to a jury for their determination as a question of

fact, and then to the judge as a question of law. The authority of a judge, however, to set aside the verdict of the jury in this connection only obtains when it may be justly said that the jury has been controlled by wrong impulses, either passion or prejudice, or a misunderstanding of the facts, and that the minds of all reasonable men, when considering the question dispassionately, would conclude to the contrary.

STATUTORY LAW

As supplemental to or in modification of the common law with reference to master and servant, there is the comprehensive law relating to mines and mining hereinabove mentioned, and a child labor law, the statute above referred to causing the right of action for the death of an injured person to survive to the personal representative for the benefit of the widow and next of kin. The rules which control the right of recovery, however, under this statute are the same which would apply to the claim of the injured person if living, and the amount of compensation for death is limited by this statute to \$10,000. Prior to the year 1903 the amount of liability in Illinois for compensation in case of death was limited to \$5,000. It is the theory of this last named law, however, that the compensation shall be commensurate with the actual damage to the widow or dependent next of kin occasioned by the death of the decedent, but not in any event, however, to exceed the limitation fixed by the statute. In addition to the statutes above mentioned, there is in force in Illinois, a statute requiring automatic couplers, grab irons and train brakes on all railroads, and the statute requiring blowers on metal polishing machinery, and a further statute requiring guards on all dangerous machinery and fences around dangerous places and all factories and work shops, and another requiring guards and safety devices to be used in the construction, alteration and erection of high buildings, etc. Those engaged in agricultural pursuits are afforded some protection by a statute requiring guards on dangerous portions of threshing machinery and corn shellers. In none of these statutes, however, except in the railway safety appliance law, has the legislature attempted specifically to take away any of the

common law defenses arising under "the fellow servant rule," "the assumption of risk rule," or that of "contributory negligence." The courts, however, in construing these various acts with reference to their effect upon the right of the injured servant recovering, have held that as against the specific wilful violation of the provisions of these safety appliance acts the defense of "assumed risk" or of "contributory negligence" would not avail the master. The control of the relation of master and servant rests entirely within the power of the state legislature, and under our system of government, as a general proposition, the federal government has no authority to legislate with reference to the rights of the citizens of any state. The federal government, however, under the authority of the federal constitution authorizing the federal government to control commerce between states, has passed an act controlling the rights of master and servant engaged in interstate commerce. The first attempt at this legislation was in 1906 when Congress passed an employers' liability act affecting common carriers, but the Supreme Court pronounced it invalid in respect to carriers doing both interstate and local business within the state, because it did not clearly limit its application to the former. On April 22, 1908, Congress passed a new act in which it attempted to make the segregation of local from interstate commerce required by the decision of the Supreme Court, by substituting for "shall be liable to damages to any of its employes," "shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce." The new act has been affirmed in the inferior federal courts in the case of *Watson v. St. Louis etc. R. Co.*, 169 Federal Reports, and in the case of *Zikes v. O. R. & N. Co.*, 179 Federal, 893. Your committee has not been able to ascertain whether or not the Supreme Court has considered these cases on appeal.

THE THEORY OF SYSTEMATIC COMPENSATION

It has come to be considered by those who have given careful consideration to the question, that it is not enough to give to the servant employed by the master compensation only for those injuries resulting from the master's negligence. Under the rules

of law just outlined, a very large proportion of the accidents which occur in the industries of the country go uncompensated. In some cases on the other hand the employer is held for substantial amounts and occasionally verdicts are recovered out of all proportion to the extent of the damage really sustained; and in other instances compensation awarded for the injury is not adequate or just. In this relation we note a statement of the causes of industrial accident in 1897 in Germany: Fault of employer, 17.30%; of workmen, 29.74%; of both, 4.83%; of fellow servant, 5.31%; unavoidable danger, 41.55%; act of God, 1.27%. Applying these figures to the rules of law above set forth, one is impressed with the small proportion of industrial accidents in which a right to recover can be sustained by the servant. The principle which has been adopted in most civilized countries of the world within the last twenty-five years is a radical departure from the theory of compensation which theretofore had been in force and briefly it is as follows:

In carrying on any given industry for the benefit of those who will enjoy the products of the services supplied thereby, there will be on the whole, taking into account all the various establishments engaged in those industries, a more or less stable aggregate amount of loss and damage occasioned by industrial accidents. While each particular accident considered by itself might appear to have been preventable, if an extraordinary degree of caution had been exercised, it will also well appear when the losses are spread over the entire industry, and especially when the experience of many years is combined, that there is a more or less steady ratio between the financial loss and the financial value of the entire product, indicating that accidents are governed by laws of probability and are to a certain degree inevitable.

In other words, this loss or damage as much as loss and damage by destruction of material or wear and tear of the machinery, is a part of the cost of the commodity in the production of which the workman was employed at the time the accident took place.

It follows that the working man, or his family in event of his death, should be compensated in a reasonable amount for the

consequences of an industrial accident, not in order that some one shall be mulcted on the ground that he was at fault, but in order that this portion of the cost of the product or services shall not be transferred from the employer and the ultimate consumer to the workingman and his family, crushing them in many cases, and eventually shifting the burden to the community in the most undesirable form of charity.

Under this theory if justly regulated, there would be and there should be no extraordinary and certainly no excessive verdicts. Compensation should be governed by business principles.

Under the system generally in vogue, unfortunately the servant does not now obtain the full measure of benefit to which he is entitled, even in cases in which he has the right of recovery, for in most instances the compensation is paid to him only after long and expensive litigation and an exceedingly large amount of the money paid by the employer by reason of the accident does not reach the place where it is most needed, that is the purse of the injured servants, but it is consumed in court costs and attorneys' fees or in premiums for industrial insurance.

Theoretically, the servant, although now bearing the risk of injury in a given employment, is presumed to be compensated therefor by an increased allowance in wages which is supposed to bear some relation to the risk of injury involved in the occupation. It has also been the idea that the assumption of this risk in lieu of the enhanced compensation was a proper subject of contractual relation between the servant and the master, but this reasoning has now become obnoxious to those who have made a careful study of the subject, because the practical operation of the system is that the enhanced compensation is only paid to those who are not injured. Upon misfortune overtaking the servant in his occupation in which he meets with physical injuries, his enhanced compensation and all compensation ceases; so it will be seen in that application the money which is compensation for the injury does not reach the proper destination.

It has also come to be recognized that the assumption of risk for an enhanced compensation is not a proper subject for contract between the master and servant, because as has been

recognized by the courts in connection with the question of the right of the servant on entering the employment to release his master from liabilities to him for his injury, the master and the servant do not meet upon a common level. The master has the advantage and the servant the disadvantage. The servant compelled by his necessities seeks employment. Perhaps he must take that which is offered or nothing. The master in offering the employment has within his power the granting of that which will raise the servant from the condition of want to one of at least comparative comfort. The allurements of this temporary benefit to the servant is sufficient in the opinion of the court to bring about such an inequality in the relation of the master and servant as to render such a contract in the particular instance above mentioned as a release of liability as against public policy.

It is also now conceded that it would be exceedingly desirable both to master and to servant were some basis of liability and compensation established by law of so certain and absolute a character that its benefits to both could be contemplated at the time of the beginning of the relations of master and servant, so that the right of the servant to compensation in case of injury would be known in advance, and the liability of the master for compensation to his servant being also known, could be dealt with as a constant factor of expense in the master's business.

Another important matter entering into the theory of systematic compensation is that the uncertainty of litigation of the right of compensation should be removed and that the ascertainment of the right and the application of the remedy by the payment of compensation should be made as nearly automatic as is practical, and that the administration of the law be so simplified as to reduce to the minimum the expense both to the servant and the employer.

WHAT HAS BEEN DONE WITH REFERENCE TO SYSTEMATIC COMPENSATION

As has been said earlier in this report systematic compensation for industrial accidents has been the subject of study and of legislative action, principally in European countries up to this time. The idea will at once suggest itself that the action of the

law-making bodies of the various European countries which have dealt with this subject will be of considerable value in suggesting what might be done in this country in dealing with the situation. Upon consideration of the matter, however, it appears that because of the difference in the systems of government of the European countries and this country, there are a great many suggestions and ideas incorporated in the European acts which are inapplicable and impractical for use in this country because of the constitutional limitations and restrictions obtaining in this country.

It will be recalled that we have what is known as a dual form of government; the government of the United States exercising a limited control under the federal constitution of all the states constituting the Union, and the government of each state exercising control of its citizens and territory embraced within the confines of the state. It will also be recalled that the power of the United States government under the constitution of the United States, being a delegated authority, that government has only such power and authority as comes directly from the people by expressed grant as defined in the federal constitution. The power and authority of the state, however, existing also in its people, the state constitution is not a delegation of authority to the state government, but is a limitation and restriction upon the legislative authority of the state, so that the state possesses unlimited authority except where that authority has been delegated to the federal government or is limited, restricted or defined by the state constitution.

Stated in another way, the federal government has only such powers of control and legislation which are specifically delegated to it by the federal constitution, while the state power of legislation and control is absolute excepting in such matters as have been specifically delegated to the federal government in its constitution or as limited, restricted or defined by the state constitution. The federal constitution and the constitutions of the various states are as they are intended to be, solemn documents, inflexible and substantial in their nature, not to be changed according to the whim or caprice of the moment.

The difficulty, if it may be so termed, does not arise in the government of foreign countries where the legislative power does not rest with the people, but in those countries such changes can readily be made by the legislative body in their fundamental or organic laws as occasion or expedience may require. It has even been said that in England, Magna Charta might be altered or amended by parliament should that body deem it necessary, without recourse to the people for authority or approval.

Because of the fact that the question of systematic compensation has been the subject of investigation and thought in foreign countries for a comparatively long space of time, the result of their labors can be of advantage in a general way in suggesting that which would be desirable for like legislation in this country; and, then, it will be necessary to consider to what extent the experiences of those countries can be adopted and made available under the peculiar constitutional restrictions in this country. Until within the last few months a study of these foreign laws has been an exceedingly difficult matter, because of the fact that no English translations of them existed; but in September, 1910, the United States bureau of labor issued a bulletin containing a summary of foreign workingmen's compensation acts, which was the first opportunity presented generally in this country for obtaining information as to what had been done in those states. This document is quite voluminous and to enter into a critical minute examination and discussion of these various acts will involve more time than is at the disposal of your committee in the preparation of this report.

Mr. Carmen F. Randolph, of the New York bar, has written an exhaustive brief on "Legal Aspects of Compensation for Industrial Accidents," bearing date November, 1910, and in this connection has taken occasion to present a review of these foreign laws, and we take the liberty of quoting at length from his brief

EMPLOYMENTS COVERED

Great Britain excepted, the several countries do not include all employments in their compensation in discussing the provisions of these laws:

laws. The major classification is the selection of hazardous, as distinguished from non-hazardous employments.

In some laws the selection is made in brief and more or less general terms. Thus the French law covers workmen "in the building trades, in mills, factories and workyards, in the business of transportation by land and water, in that of loading and unloading, in public storehouses, mines, surface mines, quarries, and, furthermore, in every enterprise or branch thereof in which explosive materials are manufactured or used, or in which a machine operated by a power other than that of man or animal is employed." Other laws give elaborate lists of the industries covered.

The laws agree in covering mining, manufacturing, transportation, building, etc., but there is some diversity in respect of agriculture. For example, agricultural employment is expressly excepted in the Quebec law. It is expressly included in respect of accident due to the use of mechanical power in Austria, Hungary and Italy, and impliedly in respect of power accidents where these are embraced in general terms as in France and New Zealand. In Germany agricultural laborers are insured under a separate statute.

Some states provide separate statutes or separate treatment for certain employments, e.g., mining, navigation, railroading, building. For example, Germany has special laws for navigation and building, and the railroads being operated by the government, are under an official regime. The British act contains special provisions for seamen.

Few, if any, systems save the British cover the domestic, mercantile and commercial employments, except so far as the occasional power accidents in these employments fall within a general provision of the law. Petty industry—an establishment employing only several men—is, or may be, excepted from the compulsory force of certain compensation laws; for example, Italy, Germany. The exception seems to be partly based on the theory that the smaller the working body the better the supervision and the lesser hazard; but in view of its results we may fairly treat it as expressing the idea that the small employer may be too nearly in the financial condition of his workmen to warrant the imposition of the burden.

Generally speaking the legislature defines once for all the employments affected. But we find here and there a provision authorizing inclusion or exemption by administrative order. For instance, in Germany the federal council may exempt "establishments which do not involve special danger of accident"; and in Austria, the minister of the interior may exempt or include certain establishments owing to the absence or presence of dangerous features.

In sharp contrast with the other systems is the comprehensive law of Great Britain. The act of 1897 covered certain hazardous employments only and excepted the "workshop," an establishment not employing more than five men. Agriculture was included by the amendment of 1900. The act of 1906 covers "any employment" without regard to its hazard or to the size of a particular establishment; excepting, however, employment of a "casual nature."

INJURIES COMPENSATED

The nature of the injuries calling for compensation, their occasion, cause, and period of disablement, constitute an intricate chapter of the compensation laws, whose main points only will be indicated.

The injury must be accidental and the broadly remedial purpose of the laws is generally emphasized by a broad definition of "accident." The German imperial insurance office defines an accident as "a happening which, doing injury to the integrity of the human body, is produced by a single stroke and is clearly marked by a beginning and an end." A French publicist defines it as "an injury to the human body due to the sudden and violent action of an exterior cause." The House of Lords defines it as "an unlooked for mishap or an untoward event which is not expected or designed." Among the "accidents" embraced in the English law are the projection of an anthrax germ in the eye, a strain rupturing an aneurism, even though too slight to affect a healthy man, a heat stroke in a furnace room, a sun stroke, the murder of a messenger carrying his employer's money. Among those embraced in the French law are an injury from falling in a fit, from the horse play of a comrade unless the victim began it, from voluntarily taking a risk in

the line of humanity or duty. We note here that the British workmen's compensation acts require the employer to compensate the victims of certain "occupational diseases," anthrax, lead, mercury, phosphorus and arsenical poison, for example, to which the home secretary has added others.

"Occupational disease" is not, on the Continent, embraced in accident compensation law. The laws broadly agree that workmen shall receive compensation for such accidents only as occur in the master's service—for example, "in the course of their employment," in Austria and Germany; "by reason of or in course of their work," in France and Quebec; "in the course of and as a result of fulfilling the labor contract governed by the act of March 10, 1900," in Belgium; "arising out of and in course of the employment," in Great Britain.

The practical construction of these provisions varies somewhat in the several countries, but as a whole they express the principle that the workman shall receive compensation only for injuries occurring during the actual or constructive performance of his labor contract and connected in some way with the work. Furthermore, the accident must cause disability—disfigurement is not material unless it actually interferes with employment.

In Great Britain, "serious and wilful misconduct" of the victim absolves the master unless the injury result in "death or serious and permanent disablement." The Continental systems generally provide that compensation shall not be paid for an injury intentionally caused by the victim, though in Hungary the dependents are entitled in a case of fatality. Inexcusable fault is more strictly dealt with in Germany and Austria than in France, where in such case a judge may award a portion of the regular compensation.

All the laws deny compensation for casualties entailing less than a fixed period of disablement, but each falls into one or two grand divisions according as accidents are or are not partially covered by a system of sickness insurance.

In the first division the periods are comparatively long. In Austria four weeks' and in Germany three

months' (ninety-one days) disability elapses before accident compensation becomes due, but in each country a disability of more than three days is compensated through a compulsory sickness insurance system to which the workmen contribute two-thirds of the expense and the employer one-third.

In the second division they are comparatively brief; for example, two days in the Netherlands, three in Russia, five in France, one week in Belgium, Great Britain, New Zealand, South Australia, two weeks in British Columbia and Queensland.

WHO RECEIVE COMPENSATION

The industries embraced in each law broadly indicate the parties entitled to compensation, except where discriminations are made, as in singling out workmen engaged on the hazardous side of an employment, e.g., the use of machinery in agriculture. In each country, however, a right to compensation depends more or less upon a maximum rate of wages. Great Britain alone distinguishes here between the manual and the clerical employe, imposing no wage limit upon the former while denying compensation to the latter whose annual wages exceed \$1,216. In the other countries the wage limit affects all employes and works in one of two ways. In one group of laws a victim receiving more than a certain annual wage is not compensated: Belgium, \$463; Denmark, \$645; Germany, \$714; Russia, \$772; Italy, \$1.35 per diem. In the second group, employes in receipt of more than a fixed sum receive a compensation based upon these figures, not taking the excess into account; Austria, \$487; France, \$463; Hungary, \$487; Norway, \$321; Netherlands, \$1.61 per diem.

WHO PAY COMPENSATION

No state appears to contribute to accident compensation (except of course where an industry is operated by the state, e.g., the German railways), the prevalent purpose being, as we shall see, to impose this upon the industries affected and not directly upon the resources of the community at large. We shall see, however, that certain states take a deep interest in the

integrity and distribution of compensation funds, acting as administrators, insurance agents, etc.; and in Germany the government actually advances compensation through the post offices, these (post offices) honoring orders given by the employers' associations which are thereafter assessed for the sums advanced.

In Austria workmen receiving cash wages are required to contribute 10 per cent thereof to the accident fund, the employer making deduction and depositing the amounts. Austria alone requires, in terms, a contribution to accident compensation, and this a small percentage, but it prescribes that accidents entailing not more than four weeks' disability shall be compensated from the sickness insurance fund, to which workmen contribute two-thirds to the employer's one.

In Germany a rule of like tenor, save that the four weeks is increased to thirteen, makes the workmen the chief contributors in the majority of casualties; for example, in 1907, out of 662,901 accidents only 144,703 fell within the compensation law, but their contribution to the aggregate cost of accident is relatively slight, the estimates for 1886-95 allotting 92 per cent to the employers. All the laws impose upon the employer the immediate, and, excepting the workmen's contribution in Austria, the entire liability for whatever is defined as accident compensation.

Reserving for the present the question whether this statutory liability may be passed on or distributed by some method of insurance, we inquire first whether it excludes liability in every other form, and then whether the employer may substitute a voluntary compensation scheme for the statutory one.

AS TO EXCLUSION OF LAW SUITS

The fact that an employer is liable for statutory compensation does not, of course, relieve him from prosecution in case the cause of injury falls within the criminal law. Furthermore, as statutory compensation, being graded to cover all accidents regardless of their causes, presumably falls below the damages probably recoverable by the victim of an employer's negligence and well below the punitive damages recoverable in case of his gross misconduct, it is material to

inquire whether or when the victim may sue instead of claiming compensation.

As the laws generally agree in denying compensation to the victim of his own misconduct, so generally they leave open a suit for damages to the victim of an employers' gross misconduct, though in Germany suit is maintainable only when the employer or his agent has been subjected to penal sentence. Also gross misconduct commonly requires the employer to indemnify third parties for whatsoever liability they have assumed for him or share with him. For example, if he be a member of an association he must make good to it compensation paid on this account as in Hungary and Germany.

Beyond agreeing that damage suits may be maintained in cases of gross or criminal misconduct, the laws divide into two groups in their regard.

In one group, including Belgium, France, Hungary, Germany, the injured workman is barred from action.

Great Britain heads the other group. The workmen's compensation act leaves intact not only the common law action, but actions under the employers' liability act of 1880, but it seems that a workman who loses his suit cannot thereafter institute arbitration proceedings under the act. He has made his election and must abide by it. The act provides, however, that where it is determined in an action that the defendant is not liable in damages, but would have been liable for the statutory compensation the court shall, if the plaintiff request, assess compensation, deducting, however, all or part of the costs of suit.

In Sweden a workman may both claim indemnity under the "common law or special law" and compensation under the statute, but if he obtain damages the employer may deduct the compensation.

SUBSTITUTION OF VOLUNTARY SCHEME

On the theory that a workman in "contracting out" of a benefit allowed by statute is not really a free agent, the laws generally forbid unofficial agreements between employer and workmen whereby the latter

waive the benefit of their provisions. Some laws provide, however, that a voluntary compensation scheme approved by the authorities as being of at least equal value to the beneficiaries may be substituted in whole or in part for the compulsory one.

Workmen's acceptance of the scheme is required in Great Britain; but not in Austria, France, Italy.

THE COMPENSATION

The laws generally require the employer to pay funeral expenses not exceeding a fixed amount, and first aid to the injured is usually prescribed in one way or another. All the laws base compensation on the victim's earnings, and in computing these any valuable consideration over and above cash payments is generally reckoned, as for example, a workman's board. In an English case a waiter's tips were taken into account. In some countries earnings are calculated on a collective basis for certain classes of workmen; for example, seamen and agricultural laborers in Germany.

In cases of fatality, compensation is paid to dependents either in the form of a pension or in a lump sum. A pension of 50 per cent of annual earnings is paid in Norway, 60 per cent in Austria, France, Germany, Hungary, the Netherlands; 66 per cent in Russia. Belgium prescribes an annuity of 30 per cent of annual earnings. In the following states these lump sums are paid instead of pensions: Three years' earnings, but not under \$729 nor over \$1,459 in Great Britain and South Australia; not under \$1,000 or over \$1,500 in British Columbia; not under \$973 or over \$1,946 in New Zealand and Queensland; four years' earnings, but not under \$321 nor over \$857, in Denmark; five times the annual earnings in Italy.

Some laws apportion the death compensation among dependents according to a rigid schedule so that the sum actually paid depends on the existence of persons answering the description; for example, in Sweden, \$32 to a widow during widowhood and \$16 to each child until it reaches fifteen years, the whole not to exceed \$80 per year. Other laws require the distribution of a specific amount among whatever dependents may be entitled; for example, Italy.

For total disability the following states prescribe these amounts by way of pension: Austria, Denmark, Germany, Hungary and Norway, 66-2/3 per cent of the annual earnings; Belgium, 50 per cent daily wages; Great Britain a weekly payment of not more than 50 per cent of average weekly earnings and not over \$4.87 per week; a weekly payment of not more than 50 per cent of average weekly earnings, not exceeding \$1,500 altogether, in British Columbia; not exceeding \$1,459 in New Zealand, South Australia and Western Australia; not exceeding \$1,936 in Queensland; in Italy six times annual earnings but not less than \$579; in Sweden an annual pension of not more than \$80. In Germany and Hungary the pension is increased to full annual earnings when the victim is so helpless as to require an attendant.

In case of partial disability certain states expressly prescribe compensation according to an estimated diminution of the victim's earning power; that is to say, he receives the assumed difference between earnings before and after the accident, and it would seem that the laws generally operate along this line.

Most laws do not grade disability compensation according to a classified list of specific injuries. But Sweden specifies certain evidences of total disability and schedules compensation for partial disability 70 per cent of the compensation limit in the case of loss of one eye and impairment of the other, down to 10 per cent for deafness of one ear. And the second schedule of the New Zealand law prescribes compensation ranging from 100 per cent of the limit in such cases mental incapacity, loss of eyes, both hands or feet, etc., down to 4 per cent for loss of finger joint.

Whether disability, total or partial, is permanent or temporary gives rise to various provisions which need not be analyzed, but it is important to note that in a case of continuing disability the laws generally provide for revision of the compensation down or up as the condition of the beneficiary changes for better or worse.

An employer or his insurer who shall become responsible for an accident pension may desire to commute it for a lump sum which the beneficiary may be even more desirous of handling. Whether this may be done depends generally upon how keenly the state is con-

cerned to assure a continuing aid to the beneficiaries for the handing over of a lump sum may well mean a speedy dissipation of the money and an early recourse to that charitable aid which systematic compensation aims to avoid. The policy of the European states generally is against commutation. For example, in Austria, commutation is allowed only when "the commune legally bound to care for the claimant under the poor laws has consented to the agreement." In France, the capital sum cannot, usually, be demanded, but the employer may discharge his obligation by paying the sum into the national retirement fund (which then assumes the pension) and he must do this in case he ceases to do business. In Germany a partial disability pension of not more than 15 per cent of the full amount may be commuted for a capital sum if a request by the beneficiary shall be approved by the authorities.

CLAIMS FOR COMPENSATION AND SETTLEMENT OF DISPUTES

The laws generally prescribe that the circumstance and nature of each casualty be speedily recorded, and that a claim for compensation shall be presented within a fixed time. Establishment of the fact and degree of accidental injury and an accurate estimate of its effect are the essential foundations of every just claim, and the laws endeavor to guard against mistake, simulation and malingering by prescribing an impartial medical service. It would seem that everywhere a claimant may be required to submit to an impartial medical examination; and, furthermore, that, as in Great Britain, when a simple surgical operation will relieve or lessen disability the claimant must submit to it or reduce his claim, though he is not called upon to undergo a serious one. In stating that the laws generally prescribe the opinion of an impartial expert in case the doctors of the respective parties disagree we simply indicate the general method of dealing with a branch of the compensation system of vital importance, and one peculiarly open to errors and deceptions whose rectification depends largely upon the professional skill and standing of the doctors employed.

Passing from the special subject of medical disputes to the general procedure for the presentation

of claims and the adjudication of the serious controversies that will arise, we find widely different methods among the several systems.

In Germany where the compensation system is wholly within the sphere of public law, the judicial tribunals are, it would seem, practically excluded from all participation in its working and even from interpreting it. The employers' associations determine claims in the first instance, and their decisions may be appealed to specially constituted arbitral tribunals. Interpretation is the function of the imperial insurance office. The general spirit of the German method is followed in Austria and Hungary, though with important differences in form.

In Great Britain the question whether a particular case is covered by the compensation act is determined by the regular courts in a regular suit, and there is much litigation over the interpretation of important phrases. When, however, the case is admittedly within the act, the compensation is in the vast majority of instances agreed upon according to a simple formula; and, in case of dispute, the county courts are authorized to arbitrate or appoint arbitrators. Some such system generally obtains in the British Colonies. In Quebec, however, a claimant must institute an action at law without a jury and the judgment of the court may be appealed. In New Zealand a court of arbitration, whose general powers are defined by the industrial conciliation and arbitration act of 1908, has jurisdiction over all claims for compensation.

France largely utilizes the civil courts in the adjustment of compensation claims, though the procedure is of a somewhat summary nature. The accident itself is the subject of a judicial inquiry conducted by a justice of the peace and, if a claim for compensation is not agreed upon before the president of a district court, suit follows in a court chosen by the more diligent party. The court shall summarily decide the matter, and the decision may be appealed according to the common law.

INSURANCE

Compulsory compensation is the root of every system and generally, as we have seen, the compulsion is addressed to employers. This element of compulsion

needs to be emphasized as being fundamental because some writers seem to emphasize compulsion only where insurance of compensation is made obligatory. But in truth, insurance, even though a statute link it with compensation, is essentially a sequent and not an intrinsic factor thereof. It is a method for at once effectuating and distributing a primary obligation already imposed. In treating insurance, whether compulsory or not, as ancillary to compulsory compensation, we do not minimize its real importance; we simply put it in its proper place.

Insurance of compensation benefits the injured workman by presumably securing to him the payment of whatever sums may become due, and where it is made obligatory we may assume that the workman's interest is the prominent motive. But to the party responsible for compensation, insurance whether obligatory or not, is of equal or even greater concern. Indeed it is usually a commercial necessity, for only by some method of insurance may the burden of his risk be lightened through distribution. This need is completely met in the states where the law at once requires insurance and ordains the method. It is partly met where the law encourages insurance by indicating institutions to which the employer may transfer his obligations. Where the law is silent he who would insure must do it in his own way and at his own risk. Always bearing in mind that insurance in its passive sense tends to secure the workman, we have also to consider it in its active sense, as something to be done by the responsible party for his immediate protection. With this prefatory word on the double function of insurance, we take up an important and difficult chapter of our subject.

"State" insurance means, I take it, insurance at the public expense, a charge on the tax-paying body; and there are those who would thus socialize all insurance under government auspices. At present state insurance is exemplified fully in such legislation as the British old age pension scheme; and, to a degree where, as in Germany, the taxpayers contribute to invalidity and pension annuities; but as yet it has hardly if at all entered into the field of industrial accident. While state insurance in its primary sense plays at present a relatively small part in workmen's compensation, we

shall presently mark its appearance in a secondary sense wherever the government acts as the depository and administrator of accident funds created by private contributions.

An employer who, under a compensation law, is liable at any moment for an unforeseen sum of money, should be able to anticipate and assuage the contingency by some method of insurance. Indeed if the theory of compensation laws that industry should bear the cost of its casualties is to be fairly effectuated, it must be possible approximately to calculate the cost, and this cannot be done if each casualty must be financed separately. We have, therefore, to inquire whether a given law imposes upon employers a collective liability which involves distribution of risk, or an individual liability; and how in either case it deals with the matter of insurance; and whether or how far it permits an employer to shift his liability. In pursuing this inquiry the laws may be conveniently classified according as they ignore insurance, as they encourage it or as they compel it.

The British compensation act imposes individual liability upon every employer within its purview, from the railway company to the small householder. Except as the act authorizes the secretary of state to order an employer to insure his workmen against industrial disease in an established mutual trade insurance company or society which already comprises a majority of the employers in the particular industry—an exception, be it noted, not affecting “accident” in the ordinary sense—the British system takes no account of insurance. The employer is left to insure his risk or not at discretion. He cannot get rid of his personal liability except that in case of a continuing compensation he may purchase an annuity from the post office savings bank—an opportunity which seems to be rarely utilized. The state takes no concern in securing the workman beyond making a compensation claim a first lien in case of the employer’s insolvency.

The British Colonies generally follow the mother country in leaving insurance to the employers’ discretion, though the recent law of Quebec so far recognizes the functions of insurance companies as to require those who assume payment of the “rents”—pensions—to deposit an adequate fund with the government of the

Dominion or the province and to conform to such conditions as the lieutenant governor may impose. In the event of a company's default, however, the employer is not relieved. In fine, the British Empire prescribes "workmen's compensation" as distinguished from "workmen's insurance," yet it involves insurance in a broad sense, for, as Lord Morris said; "The liability of the employer * * * becomes that of an insurer against accident to the workmen."

CONTINENTAL INSURANCE SYSTEMS

The workmen's compensation systems of continental Europe differ radically from the British in evincing more or less concern in insurance, and in this relation they are broadly classified according as the insurance is voluntary or compulsory. Insurance is wholly or mainly voluntary in Belgium, Denmark, Sweden and France, and in each country the employers are individually responsible for compensation.

In Belgium the employer may shift his responsibility to an insurance company or a mutual association approved by the state. In case he becomes liable for a pension he shall secure its capitalized value by some approved system or deposit or insurance.

In Denmark individual responsibility of an employer may be transferred to an approved insurance company.

In Sweden the employer may shift his liability by insuring in a state insurance institute, from which he may also purchase whatever pensions may be charged upon him.

In France the employer is individually responsible. He may be released from the whole or a part of the cost of illness and the temporary compensation by satisfying the authorities that he has insured his workmen in an approved mutual association.

For securing compensation for death or permanent incapacity the French law provides:

"Art. 24.—Whenever employers who are liable, or the insurance companies, with fixed premiums or mutual, or the guaranty associations whose members

are liable jointly or severally, fail to pay, when due, the compensation charged against them as a result of accidents causing death or permanent incapacity for work, the payment shall be secured to the interested parties through the national old age pension fund, by means of a special guaranty fund, established as hereinafter provided, the management of which shall be entrusted to the said fund.

“Art. 25.—To establish the special guaranty fund there shall be added to the charge for licenses of the industries specified in Article 1, four centimes (0.8 cents) extra. A tax of five centimes (1 cent) a hectare per mining concession shall be collected on mines. These taxes may be increased or reduced according to the necessities of the case by the financial law.

“The national retirement fund may have recourse against the debtor employers for the amounts paid by it on their account under the preceding provisions.

“For reimbursing itself for its advances, the fund, in case of insurance of the employer, shall enjoy the preference under the provisions of Article 2102 of the civil code relative to the compensation due by the insurer, and it shall have no recourse against the employer.”

Compulsory insurance is the rule in the remaining systems we shall survey. Workmen “are insured” in Germany; “must be insured” in Italy; “shall be insured” in Austria, the Netherlands and Norway; are “subject to compulsory insurance” in Hungary. In such states alone do we find workmen’s “insurance” thoroughly exemplified.

In the Netherlands, Italy and Norway the employers are individually responsible. The Netherlands has established a royal insurance bank, with the post office as branches thereof. Each employer may pay to the bank annually a premium based upon his wage account, the bank paying from the aggregate fund whatever compensation may be due. An employer may, however, be permitted to assume personally his obligation or to transfer it to a company or a mutual association provided he or the transferee shall deposit in the bank a sufficient pledge. It appears that the bank gets the poorer risks and is obliged to make up

deficiencies. Norway requires all employers to insure in a state insurance institution. In Italy the employer must insure either in the national fund for insurance of workmen against industrial accidents or in private companies approved by the state, unless he shall establish for at least 500 workmen an adequate compensation scheme, or be joined in a mutual insurance association, both being approved by the state. In Germany, Austria and Hungary compulsory compensation and compulsory insurance are actually interwoven, for each system imposes upon employers a collective responsibility and this involves the basic principle of insurance—distribution of risk. The employers' accident association is the backbone of each system.

THE GERMAN ASSOCIATIONS

As Germany led off in adopting the principle of workmen's compensation, so in the employers' accident associations she has made the most striking contribution to its machinery. Promising that these associations are subject to regulative and corrective powers immediately or finally vested in the imperial insurance office, we shall give a general idea of their organization, functions and responsibilities utilizing largely the literal texts, though not keeping to the statutory order.

Insurance is undertaken on the mutual plan by the heads of establishments subject to the law, who are for this purpose united into accident associations. These are formed for specified districts and comprise all the establishments of those branches of industry for which they are formed, though the latter provision may be waived in the case of railways. An association may provide for its division into geographical sections. Establishments comprising substantial parts of different branches of industry shall belong to that association to which the main establishment belongs. The association shall compensate for accidents in other establishments if these occur in operations for which the order is given and the wages paid by a member. No contributions may be required or expenditures made except for payment of compensation, administration, reserve funds, prizes for rescue and prevention of accidents and, with the consent of the imperial insurance office, the establishment of hospitals, sanatoriums, etc.

The association may acquire rights, assume obligations and sue and be sued in its own name, and for its obligations the property of the association is the only security for creditors.

The internal law of the association is contained in a constitution enacted by the members at a general meeting and approved by the imperial insurance office.

The affairs of the association, except as they are within the competency of the general meeting, are administered by a board of directors and by agents who shall be members and shall serve without compensation save for expenses. It is represented by its board of directors and is bound by all lawful acts of the board.

Every owner of an establishment belonging to those branches of industry for which the association is established is a member of the association if the establishment is located in the district of the association. The ownership begins when the establishment opens or when it becomes subject to insurance. The owner shall present to the lower administrative authorities a declaration stating *inter alia* the nature of his establishment, the number of insured persons therein and the accident association to which it belongs; and in case of mistake in the latter respect the authorities shall assign it to the proper association. Every member has a vote and is eligible to election as a director and an agent of the association, which honorary (un-salaried) offices cannot be declined under penalty of fine, except for reasons justifying declination of guardianship.

The law of June 30, 1900, amending the accident insurance laws, thus provides for the institution of new associations and the rearrangement of existing ones. The establishment of accident association for the branches of industry newly subjected to accident insurance according to article 1 of the industrial accident insurance law, or their assignment to existing accident associations, is accomplished by the federal council after consultation with the representatives of the branches of industry and the associations concerned. Until the constitution of the accident associations established under this law shall have been approved, branches of industry may be withdrawn by decree of the federal council, after consultation with the boards of directors of the associations concerned, from one

of the accident associations established under the law of July 6, 1884; of May 28, 1885; of July 11, 1887; and of July 13, 1887, and assigned to another association, without reference to the provisions of these laws.

In the newly established accident association the constitution shall be adopted by a constituent general meeting. This consists of delegates from chambers of commerce, chambers of industry or similar representative economic organizations to which the employers of the branches of industries concerned belong. The central state authorities designate those bodies which are authorized to send delegates and determine the number of delegates for each according to its economic importance. If the territory of the accident association covers the territory of more than one state, the bodies authorized to send delegates and the number of delegates which each may send are determined by the imperial chancellor after agreement with the state governments concerned. The imperial insurance office shall call the constituent general meeting and shall conduct the proceedings until a provisional board of directors shall have been elected. The general meeting consists of all the members, unless the constitution places it on a representative basis, as where the association is divided into sections. The general meeting elects directors, amends the constitution, audits and accepts the annual balance sheet unless it confides this to a committee, determines the rules respecting the legal relations and the appointment of officials, establishes rules for classifying establishments according to the degree of accident risk in them and for determining the amount of contributions in the different establishments (i.e., the risk tariff).

The board of directors determines the compensation. The fund for compensation and expenses is raised annually by contributions assessed on the basis; first, of the wages earned in their respective establishments by the persons insured, or, in certain cases, of the local daily wage of the adult day laborer; and, second, of the risk tariff provided for in the constitution. Whenever an accident is caused by an employer intentionally or "through negligence, with omission of that degree of caution which is especially required" of him in virtue of his position the association shall in the first

case, and may in the second, hold him liable for its outlay.

Contributions may be collected in advance for the first year. Unless the constitution provides otherwise, these shall be made in proportion to the number of persons who are employed by the members of their respective establishments. When the association is divided into geographical sections the constitution may require not more than 75 per cent of the compensation to be borne by the section wherein the accident occurs. Associations may unite for the joint payment of compensation for which they are jointly responsible.

The risk tariff, which is framed by the general meeting subject to the approval of the imperial insurance office, is the basis for classifying the several establishments according to the degree of accident risk and for determining the amount of their contributions. After the first two years the tariff shall be revised every five years in the light of the accidents that have occurred in the different establishments. The revision is submitted to the general meeting with a statement of the compensated accidents in each establishment and may be adopted if the imperial insurance office shall approve. The general meeting may then for the ensuing period impose supplementary contributions or grant returns of contribution to employers according to the accidents that have occurred in their establishments.

Compensation is advanced to the beneficiaries by the postal administration upon orders of the accident associations. Once a year the central postal authorities send to the association statements of payments made and designate the postal banks to which the amounts due shall be paid. These amounts are then collected from the members by the board of directors.

The accident association shall accumulate a reserve fund. For its accumulation there shall be levied, when the first period for the payment of insurance contributions arrives, a supplementary assessment of 300 per cent of such contributions; at the second period 200 per cent; at the third, 150 per cent; at the fourth 100 per cent; at the fifth, 80 per cent; at the sixth, 60 per cent; and thereafter 10 per cent less at each period until the eleventh period. After the close of the first eleven years, or provided that the eleventh year has already been passed at the time this law goes

into effect, from the latter time, the accident association shall annually add to the amount of the legal reserve, for three years 10 per cent, and then for each succeeding period of three years 1 per cent less down to 4 per cent, including the interest each time. After the expiration of this time such amounts shall be taken from the interest of the reserve fund as may be required to prevent a further increase in the average amount of the contribution required per insured person. The rest of the interest is again to be added to the reserve fund.

In case of stringent need, the association, with the approval of the imperial insurance office, may use the interest of the reserve and even encroach on the principal of the reserve before the accumulation required above has been attained. Restitution to the reserve shall then take place as may be required by the imperial insurance office.

The associations issue regulations for arrangements to be made and orders to be issued by the members for the prevention of accidents in their establishments, under threat of punishment for failure to comply by fines of not more than 1,000 marks or by listing the establishment in a higher risk class, or, if it is already in the highest class, by the imposition of surtaxes of not more than twice the amount of the contribution. The association also prescribes rules of conduct for the insured workmen in order to prevent accidents with a penalty of not more than six marks for violation. The regulations shall be submitted to the imperial insurance office and shall be made with the co-operation of representative workmen. The number of these representatives shall be equal to the directors participating and they shall have full voting power. There shall be sent to the representative of the workmen a draft of the rules which are to be submitted to them for their consideration and adoption. The imperial office may consult workmen's representatives before approving the rules. Associations shall enforce the regulations and to this end may authorize inspectors and accountants to investigate the establishments. If the employer fears that the inspection of his business by the technical inspectors of the association may result in the disclosure of a trade secret or in injury to his business interests he may claim the privilege of having the inspection conducted

by other experts. Technical experts and accountants shall be sworn and shall not disclose any information, "and shall refrain from copying any arrangement or method of operation within the establishment which are kept secret by the owner, but which come to their knowledge, provided that these are trade secrets."

The compulsory associations of Austria and Hungary differ in many respects from the German model but we shall show only certain radical differences in organization. In Hungary employers and employees are grouped in an association called the national workmen's sickness and accident insurance fund to which are affiliated district insurance funds of local operation. The association is a "self-governing organization of the employees insured against sickness and accident and of their employers" under the supervision of a state workmen's insurance office. Austria follows Germany in segregating accident from sickness insurance but the employments are not, as in Germany, grouped by industries. They are grouped by districts conterminous with the territorial provinces of the state and for each district there is an insurance institution of whose directors one-third represent the employers, one-third the workmen and one-third are appointed by the state. Several states prescribe the compulsory association of employers in certain circumstances. In Italy, for example, the state may order the employers in a particular industry to form a mutual association provided there be at least 15,000 workmen employed therein.

PERMISSIVE INSURANCE

We have remarked that most Continental states differ from Great Britain in exempting a large number of employers from compulsory compensation either because the industry is non-hazardous or the plant small. But some of them offer not only to the exempt employer but to workmen at large an opportunity to participate in the insurance system, an inducement to the former being release from civil liability for accident, and to the latter an increased compensation if he be already covered by the law, and if not an assurance of indemnity. This opportunity is, for example, given by the laws of Germany, France and Hungary.

INTERNATIONAL QUESTIONS

A compensation system, being part of the municipal law of the state, its benefits and burdens may be presumed to affect all persons within the jurisdiction, whether they be foreigners or citizens, and none without the jurisdiction. This general rule is, however, frequently supplemented by modifications devised in view of the ramifications of industrial enterprise and the migration of workmen.

Considering first the case of the employers, we find that an employer coming in from abroad is, under some systems, subject to peculiar obligations. For example, in Germany a foreigner temporarily engaged in business may be required to double the normal contributions to the proper association and give security. The Hungarian law provides that an undertaking whose plant extends beyond the country is subject to insurance in one state only—the location of the principal office being the controlling factor. If, however, the undertaking has a permanent representative in Hungary the local law governs the Hungarian workmen. A treaty between Germany and the Netherlands, August 27, 1907, deals with compensation in undertakings carried on in both states.

Coming to migratory workmen we first consider the case of citizens. Several systems provide that when a domestic employer employs a citizen beyond the territory the compensation law follows the person unless he is entitled to compensation under the foreign law, for example, Hungary. The position of a workman or his dependents who leave the country during the term of an accident pension depends on the statute. Germany continues payment so long as the pensioner reports to the German consul. Great Britain stops payment except in case of permanent injury. In Sweden a pension is suspended during absence. In some countries a lump sum may be reclaimed in settlement, for example, Hungary.

In the relation the rule in federated nations is of interest, and we note that the German Empire is, for this purpose, one country. The Prussian, Bavarian, the Saxon, moving about within the Empire, may draw his pension wherever he happens to reside.

Foreign workmen are, as a rule, within the benefits of the law, and if they become pensioners are on the footing of citizens so long as they remain. Some laws provide that if they leave the country they may receive lump sums in settlement—sums amounting to three times the annual pension in Germany and France. The dependents of a foreign workman, if they are also residents, usually stand in his shoes, but their position may depend upon the practice in their own country; for example, France, Sweden and Germany. In this connection we note that recent development of international law—conventions dealing with various industrial conditions. Among them are several which confer reciprocal benefits in the matter of workmen's compensation.

PARTIES TO ADMINISTRATION

The parties interested in a workman's compensation scheme are the state, which orders compensation, the employer, who pays it, and the workman, who receives it, and it is of interest to understand to what extent each participates in the administration of representative systems.

Under the British workman's compensation act the home secretary may appoint medical referees and certifying surgeons, and may add to the list of industrial diseases. County court judges act as, or appoint, arbitrators in a compensation case where the parties do not agree. The registrar of Friendly Societies is authorized to decide whether a compensation arrangement between employer and employe shall be substituted for the act. The post office offers, but does not force, its assistance in the matter of providing annuities. In short, the act operates with comparatively little intervention by the state—a condition accounted for by anti-bureaucratic traditions which, though somewhat weakened of late, are not yet abandoned. On the continent of Europe, where bureaucracy is thoroughly established, the functions of government are more or less intimate.

Coming to the other parties interested, we find that neither the British nor the French systems afford room for either employer or workmen to undertake formal responsibility for administration, with the impor-

tant qualification that the British law provides for a registered agreement between them by which most claims are settled. Germany gives to the employers the prominent place in administration. Their associations are the keystone of the whole system and, whilst efficiently supervised, are granted a large measure of self-government. In Austria and Hungary employers are substantially represented in the associations. While the German workman is not admitted to the employers' associations, representative workmen co-operate with them in framing regulations for the prevention of accidents, and are given a place in the arbitration courts to which are made the first appeals. In Hungary workmen are represented on both the major and the minor insurance associations—the national and the district funds—and in Austria, in the trade associations of each district.

REVIEW OF FOREIGN LAWS

Our survey of foreign laws, short as it is, needs an accentuation of several points. Each country has, generally speaking, legislated with deliberation—in many instances after years of study and discussion. All the systems confer upon the workmen within their purview a legal right to fixed compensation for industrial accidents not caused by their willful act, but except the English, which covers all workmen except the "casual," they generally exclude workmen who are not engaged in "hazardous" employments.

The right to compensation everywhere revolutionizes the old law limiting employer's liability to cases involving his actual or at most his constructive fault. It is based upon the novel economic dogma that industry should bear the burden of its accidents by compensating the victims. There is no disposition to make good to the victim the entire loss. Partial indemnity only is prescribed, and this is generally based on his earning capacity as evidenced by his wages. The compensation is usually paid by the employer (with the important exception of the German sickness insurance funds covering a large proportion of accidents and created largely by workmen's contributions) and the outlay is supposed to be charged to cost of production.

All the leading countries, except Great Britain, deny actions for damages to workmen entitled under a compensation law, except where the master is in gross fault.

All countries eliminate trial by jury from the procedure in disputed claims; and, France excepted, the more important countries do not prescribe a special action in the ordinary courts but provide a scheme of arbitration. In short, the maxim "he gives twice who gives quickly," so conspicuously pertinent in the case of injured workmen, is reflected in as summary and untechnical a procedure as is deemed compatible with justice to both parties.

The wider the distribution of the burden of compensation the lighter, of course, is its incidence upon individual employers and the greater the security of the beneficiaries. Distribution implies the employment of some method of insurance, and the several systems are broadly classified according to their attitude toward insurance.

Great Britain typifies the systems which officially take no account of insurance—each employer may insure or not at discretion and does not shift his personal liability by so doing.

France typifies another sort of voluntary insurance whereby the employer may shift his liability by insuring in an approved institution.

In systems of the third class insurance is compulsory and may, as in Germany, be necessarily involved in the collective liability imposed upon groups of employers. Or, as in the Netherlands, employers may be required to insure in designated institutions.

Except in Great Britain and some of her dependencies it is, generally, the rule that insurance by a prescribed or approved method discharges the employer from personal responsibility for compensation.

The systems of continental Europe are, as a rule, more highly organized and more thoroughly worked out than the British system, which, indeed, is crude in comparison. And a reason for this difference is that the state socialism, which underlies all systems, thrives best in communities accustomed to paternalism and disciplined to bureaucracy.

The laws of the several countries agree in their general aim. Certain classifications by groups are more or less marked. Instances of borrowing and adaption are many. But in the last analysis each country has gravitated to a system whose spirit and form are commended by racial and political characteristics, by local habits and customs. Broadly speaking it appears that those systems work most smoothly where existing institutions of one kind and another capable of facilitating their purpose have been skillfully utilized to this end.

COMPULSORY COMPENSATION IN THE UNITED STATES

As stated heretofore in this report three states have lately enacted compulsory compensation laws.

A New York law of June 25, 1910, entitled "An act to amend the labor law, in relation to workmen's compensation in certain dangerous employments" provides (Article 14 a):

Sec. 215. This article shall apply only to workmen engaged in manual or mechanical labor in the following employments, each of which is hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risks to the life and limb of workmen engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

1. The erection or demolition of any bridge or building in which there is, or in which the plans and specifications require, iron or steel frame work.

2. The operation of elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge or building for the conveying of materials in connection with the erection or demolition of such bridge or building.

3. Work on scaffolds of any kind elevated twenty feet or more above the ground, water, or floor beneath in the erection, construction, painting, alteration or repair of buildings, bridges or structures.

4. Construction, operation, alteration or repair of wires, cables, switchboards or apparatus charged with electric currents.

5. All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite or any other explosives where the same are used as instrumentalities of the industry.

6. The operation on steam railroads of locomotives, engines, trains, motors or cars propelled by gravity or steam, electricity or other mechanical power, or the construction or repair of steam railroad tracks and road beds over which such locomotives, engines, trains, motors or cars are operated.

7. The construction of tunnels and subways.

8. All work carried on under compressed air.

Sec. 217. If, in the course of any of the employments above described, personal injury by accident arising out of and in the course of the employment after this article takes effect is caused to any workman employed therein, in whole or in part, or the damage or injury caused thereby is in whole or part contributed to by

(a) A necessary risk or danger of the employment or one inherent in the nature thereof; or

(b) Failure of the employer of such workman or any of his or its officers, agents or employes to exercise due care, or to comply with any law affecting such employment; then such employer shall, subject as hereinafter mentioned, be liable to pay compensation at the rates set out in 219-a of this title; provided that the employer shall not be liable in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed, and provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and willful misconduct of the workman.

Sec. 219-a. The amount of compensation shall be in case death results from injury:

(a) If the workman leaves a widow or next of kin at the time of his death wholly dependent on his earnings, a sum equal to twelve hundred times the daily

earnings of such workman at the rate at which he was being paid by such employer at the time of the injury subject as hereinafter provided, and in no event more than \$3,000. Any weekly payments made under this article shall be deducted in ascertaining such amount.

(b) If such widow or next of kin at the time of his death are in part only dependent upon his earnings, such proportionate sum not exceeding that provided in sub-division (a) as may be determined according to the injury to such dependents.

(c) If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding \$100.

Whatever sum may be determined to be payable under this article in case of death of the injured workman shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such dependents, for the benefit of the persons to whom the expenses of medical attendance and burial are due.

2. Where total or partial incapacity for work at any gainful employment results to the workman for the injury, a weekly payment commencing at the end of the second week after the injury and continuing during such incapacity, subject as herein provided, equal to 50 per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the said employer, or if he shall have been in employment of the same employer for less than a year, than a weekly payment of not exceeding three times the average daily earnings on full time for such less period. In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average earnings of the workman before the accident and the average amount he is able to earn thereafter as wages in the same employment or otherwise. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may have received from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earn-

ing or is able to earn in the same employment or otherwise after the accident, but shall amount to one-half of such difference. In no event shall any compensation paid under this article exceed the damage suffered, nor shall any weekly payment payable under this article in any event exceed \$10 a week or extend over more than eight years from the date of the accident.

The act further provides *inter alia* that no existing rights of action shall be affected thereby, but that one who brings an action shall forfeit claim to compensation; also that "any question which may arise under this act shall be determined either by agreement or by arbitration as provided in the code of civil procedure or by an action at law as herein provided" which action "shall be conducted in the same manner as actions at law for the recovery of damages for negligence."

By the Montana act of 1910, an act creating a state accident insurance and permanent disability fund for coal miners, it is provided that "all workmen, laborers and employes employed in and around any coal mines or in and around any coal washers in which coal is treated, except office employes, superintendents and general managers, shall be insured in accordance with the provisions of this act, against accidents occurring in the course of their occupation." The operators shall pay to the auditor of this state within five days after the monthly payment of wages 1 cent per ton on the tonnage of coal mined and shipped or ready for shipment, and operatives shall submit to a deduction of 1 per cent. of their gross monthly earnings which shall be paid by the operators to the state auditor within five days after the payment of monthly wages. The amount so paid to the auditor is called a "tax." The auditor shall pay the moneys to the state treasurer, who shall place them in a distinct fund called the employes co-operative insurance and total permanent disability fund. The auditor "upon being satisfied by adequate evidence of accidental death" shall issue a warrant upon the treasurer to the dependents of the deceased in the sum of \$3000. A workman receiving permanent injury shall receive a monthly compensation of not more than \$1 per day for each working day. Loss of a

limb or an eye shall be compensated for in the sum of \$1000. "If there are no funds available to pay the auditor's warrant this shall draw interest at the rate of 10 per cent per annum until such warrant is called for payment by the treasurer which shall be as soon as the fund is sufficient to pay the same with its interest then due." When any monthly payment has been made, the beneficiary may claim a lump sum not in excess of \$3000, from which any payments already made shall be deducted. The auditor "shall have plenary power to determine all disputed cases which may arise in his administration not herein provided for and to recommend in his report the rates or premiums necessary to preserve such fund and shall order paid such indemnifications as herein provided. He shall have power to define the insurance provisions of this act by regulations not inconsistent therewith and shall prescribe the character of the monthly or other reports required of the parties liable hereunder and the character of the proofs of deaths or total permanent disability, and shall have power to make all other orders and rules necessary to carry out the true intent of this act." Acceptance of benefits shall relieve the employers from liability to suit and the commencement of a suit shall operate as a forfeiture of the right to benefits.

The preamble to a Maryland statute reads as follows:

An act to create a fund for the relief and sustenance of employes injured in coal and clay mining in Alleghany and Garrett counties, and the dependents of employes injured or killed in such mining, and providing for the imposition of a tax of 27 cents per month, for such employe, upon all employers engaged in the business of coal and clay mining, in said counties, and for a like tax upon each employe to be deducted from his monthly wages by the employer, both taxes to be paid monthly, and a report made thereon, to the treasurers of said counties by such employers, the same to be kept by the treasurers in distinct funds to be known as 'miners' and operators' co-operative relief fund,' providing for certain payments therefrom under the orders of the county commissioners, as relief money, to persons injured and disabled while in the discharge of their duties in or about such mines, and for the payment of relief money to the extent of \$1,500, under orders

of the county commissioners, to the personal representatives of such employe who may meet death in the discharge of his duties, for the relief and sustenance of the indigent dependents of such employe; defining the administrative powers and duties of such commissioners in relation to such relief fund, and their right to enforce the payment of the tax, providing for advancements by the treasurer of one county to the treasurer of the other to cover temporary depletions of such county fund, and for the remission of the tax when such fund reaches \$50,000; exempting parties complying with this act from suits for injuries, disability and death sustained by their employes, when relief has been accepted or sued for under this act;

Whereas, it is the duty of the government to provide sustenance in the case of helpless indigence to those who are or may become paupers and charges upon the public and is the settled practice of governments to do so; and

Whereas, experience has shown that the occupation of coal and clay mining in Alleghany and Garrett counties is attended with peril peculiar to the occupation itself, and that a great number of employes in the mines, without estates and having large families and dependents, are annually disabled or killed in consequences of injuries sustained in their employment and they and their families become objects of charity and charges upon the public authorities, and their infant children are unable to secure the proper support and education; and

Whereas, it appears that such injuries, disabilities and death occur with such regularity as to be susceptible of approximation in advance and are inherent in the occupation and a part of the business itself and the monetary loss therefrom ought to be charged up to the occupation and business; and

Whereas, sound policy requires that some provision be made for the sustenance of the family and dependents of such injured or disabled employe and the widows and infant children and dependents of such employe when death results from such injuries, etc.

The country treasurer shall make payments when directed by the county commissioners; specific amounts are paid for speci-

fic injuries; e. g., loss of hands or blindness \$750; there is paid in addition \$1 a day during medical treatment of not more than twenty-six weeks; for total disability other than specified, \$1 a day for not more than fifty-two weeks; in case of death within a year payment of \$1500, less what may have been paid as above. Commissioners shall determine what dependents are entitled, how much they shall receive, and whether in lump sums or allowances, and they may invest \$750 in home for widow and infants. The bringing of suit for damages forfeits rights under the act.

It is perhaps too early to judge what the result will be upon the laborer of the adoption of the workingmen's compensation act in New York, but some idea may be gained of its effect upon the employer by the action of insurance companies who insure against employer's liability. It seems that at the same time that the compensation act went into effect in New York, a new employer's liability act also went into effect, which modified the employer's defenses in an action for injury. In a circular letter of Walter Drew, commissioner of the National Erectors' Association of New York, dated November 4th, the situation as to insurance under the two acts is stated as follows:

Insurance Rates. Employers, especially in the trades affected by the compensation act, should pay careful attention to the question of insurance rates under the new laws before taking contracts. These rates have been so largely increased as to form an appreciable item in determining cost. It will be noted that under the compensation act, the workman has the option of claiming under that act or under the liability law. If he has a strong, clear case, he will probably claim under the liability law, as the chance for large damages would be better. If, however, he has a case in which the employer would not be liable at all under the liability act, he will claim under the compensation act. The employer, of course, must be insured against his risk under both acts.

The rates established in the iron trade are \$7.50 per \$100 on the pay roll for the employers' liability act; \$5 for the compensation act, and \$3 for public insurance, on buildings where steel framework is called

for in the plans. The rate for steel frame buildings is in all the trades much higher than in other buildings. Printers, steam fitters, plumbers, plasterers and many other trades will have to pay on steel buildings a rate of \$2 for compensation, \$1.25 for employers' liability. In the masons' trade on steel buildings, the rate under the compensation act will be \$3.25 per \$100, and the entire rate, including compensation act, liability act and public insurance will be \$7.25.

In addition to all this, is a new risk imposed by the statute on contractors who employ sub-contractors, as they are made liable for accidents to the sub-contractors' workmen. For this contingent liability, the rate of 60c for each \$100 of the entire cost of a steel building will be charged and 50c per \$100 for other buildings.

The above rates are based on a limit of liability of \$5000 to one person, and \$10,000 to more than one in any one accident. If these limits are doubled, there will be an increase of probably 30 per cent in the rate. If all the sub-contractors are insured, the company will carry the contingent liability of the general contractor at the rate of 15 per cent per \$100 on the cost of the building. If they are not insured and if the general contractor pays the higher rate of 60c for contingent liability, his insurance will cover the liability of the sub-contractors also.

In conclusion in this letter Mr. Drew says:

A large contractor who had begun a contract without reference to the change in liability rates under the New York law, now finds that he will in all probability be able to complete his contract only at a loss. The high rates under the New York act should furnish very serious food for thought in other states where statutes of this kind are contemplated. This does not mean that the compensation principle is not correct. One reason for the very high New York rate is the fact that the compensation principle is not in full and compulsory operation. The workman having a choice makes it necessary for the employer to be insured under two statutes instead of one. This is not only uneconomic, but it would seem to mean that an undue penalty is imposed upon the employer of New York in trying out the experiment of the compensation principle in this country.

In addition to the legislative action above mentioned, efforts have been made in some instances by the employer and the employe, looking to some alleviation of the hardship experienced by the employe under the present system of compensation.

A synopsis of some of the plans now in force of this character is set forth in Bulletin No. 90, bureau of labor, September, 1910, and we present them herewith as found in the bulletin, excepting the plan of Deere & Company, which information is obtained from the printed description of the plan before the committee.

UNITED STATES STEEL CORPORATION

A striking recent illustration of this form of action is found in the case of the United States Steel Corporation, which put a new accident relief system into operation in May of this year for a trial year. This corporation has a pay roll of nearly a quarter of a million men, and while many of its branches of work involve what are called hazardous employments, all classes of employment are on the same basis as to the benefits of the relief system. The question of negligence is put entirely aside, the only condition for the receipt of relief being that there shall be disabling accidental injury in the course of employment. The injury must be such as to prevent the employe from following "his usual or any other occupation." The bringing of a suit at law bars all benefits under the scheme. The employe is called on for no contribution, all funds being supplied by the Corporation.

The amount of benefits paid begins with 18 months' earnings as death benefits for married men living with their families, the scale increasing with the number of children under 16 years of age and with length of service, the maximum limit being \$3,000. Unmarried employes are entitled to no death benefits other than funeral expenses, and the limitation as to married men, i. e., "living with their families," apparently cuts off non-resident families of alien workmen from all compensation under this scheme. Considerable discretion is allowed in the administration of both death and disability features of the scheme, and provision is made for medical and hospital treatment. Temporary disability is relieved according to a sliding scale, the amount not

to exceed \$1.50 per day for single men and \$2 per day for married men. Permanent disability cases are generally to be dealt with according to their nature, but stated rates are announced for the loss of a hand (12 months' wages), the loss of an arm (18 months' wages), the loss of a foot (9 months' wages), the loss of a leg (12 months' wages), and the loss of an eye (6 months' wages). This system connects itself essentially and naturally with measures of the company to safeguard its workmen from accidental injury.

INTERNATIONAL HARVESTER COMPANY

Another corporation taking an important step in the same direction is the International Harvester Company and associated companies, the system becoming effective May 1, 1910. This scheme, affecting approximately 30,000 employes, also ignores the customary defenses of negligence, assumed risks, and fellow-servants, only intoxication and willful disregard of the use of safety appliances cutting employes off from the benefit of the scheme. No distinction is made between employes having resident and those having non-resident families. Dependents of employes dying as the result of accident and within 16 weeks of its occurrence receive three years' average earnings, but not less than \$1,500 nor more than \$4,000. For injury causing "inability to work at any gainful occupation whatsoever," the pay is one-quarter of the average earnings for the first 30 days and half pay thereafter for not more than 104 weeks from the date of the accident, compensation not to exceed \$20 a week. If total disability continues after 104 weeks, the workman shall receive during such continuance an annual pension equal to 8 per cent of the death benefit which would have been payable in case of his death, but not less than \$10 per month, payments to be made monthly. The loss of a hand or a foot calls for the payment of one and one-half years' wages, not less than \$500 nor more than \$2,000; the loss of both hands or both feet, or one hand and one foot, four years' average wages, but not less than \$2,000; the loss of one eye, three-fourths of a years' wages; and of both eyes the same as for both hands or feet. By the contribution of

small sums—6 cents per month from employes earning \$50 or less per month, 8 cents for those earning more than \$50 and not more than \$100, and 10 cents from those earning more than \$100, the one-fourth pay for the first thirty days' disability may be increased to one-half pay for workmen making such contributions. No part of such contributions is to go for operating expenses. Lump sum payments may be arranged for in lieu of weekly payments, and the acceptance of benefits is to operate as a release from all claims against the company.

NATIONAL ASSOCIATIONS OF EMPLOYERS

The National Metal Trades Association announced in the spring of this year a mutual insurance scheme in which employes in shops managed by its members may procure insurance covering sickness as well as accidents at a cost of \$1 per month. No initial deposit or membership fee is required. No benefits are paid for disability lasting not more than seven days, but if it lasts for thirty days full benefits are paid for the whole period. The rates of benefit vary from \$20 to \$60 per month, according to the class of employment. The president of the National Cotton Manufacturers' Association advocates the establishment of a contributory accident insurance system for the cotton industry, and the National Manufacturers' Association has had a committee at work since early in the current year investigating the question of compensation with the idea of drafting measures to be submitted to that body. The report of this committee to the fifteenth annual convention of that body in May last shows 67 per cent of the manufacturers in membership with the association to be in favor of a voluntary mutual insurance system among the membership, while 90 per cent are dissatisfied with the workings of the present employers' liability laws and liability insurance systems. The association adopted resolutions very much in agreement with the findings of the New York commission set forth above as to the inadequacy and unsatisfactory results of the present liability system, the fourth resolution being:

That we recommend to our members the inauguration with the least possible delay of a system of vol-

untary, mutually contributory industrial indemnity insurance, this system to be elastic enough to provide for voluntary, contributory sickness, old age, and death insurance, if later deemed advisable.

The association expressed its desire "to co-operate with state legislators in promoting uniform, sound industrial indemnity legislation," while opposing unsound legislation. The president and directors of the association were authorized to arrange for the establishment of a suitable plan.

NATIONAL CIVIC FEDERATION

The National Civic Federation, representing employers, employes, and the public at large, at its tenth annual meeting in November, 1909, made the matter of compensation for injured wage earners the principal subject of consideration, carrying the discussion forward to its conference on uniform state legislation in January last. At this latter meeting it was resolved to recommend "that the workmen's compensation acts, fair to the employer and employe and just to the state, be uniformly substituted for the present system of employers' liability for injuries received in and arising out of the course of employment."

AMERICAN FEDERATION OF LABOR

Organized labor, as represented by the American Federation of Labor, is also strongly committed to the idea of compensation, the proceedings of the convention showing the growth of this sentiment to be rapid in recent years. The executive council of the federation has prepared four bills embodying compensation provisions, and applicable to employment generally, to employes of the federal government, to dangerous employments in jurisdictions subject to federal control, and to persons employed in interstate and foreign commerce. These bills were indorsed by the annual convention of the federation in 1909, and activity of agitation in their behalf was encouraged. The desirability of uniform enactments was dwelt upon in this connection—a feature of the case that was also emphasized in the discussions by the National Civic Federation noted above.

DEERE & COMPANY

This company has established for the benefit of its employees a system of benefit insurance for disability and death resulting from sickness or accident, the cost of which insurance is equally divided between the company and the employees. The insurance begins as soon as the employee who is paid through the weekly pay roll signs the employment contract and begins work for the company, and terminates when the employee is discharged or voluntarily quits or without notice leaves the employ of the company. The insurance continues sixty days after the employee is temporarily released from service through lack of work. Insurance may be continued by regular employee's absence from work over sixty days by making special arrangements with the employment agency. Sick benefits are paid in accordance with the schedule, and in case of death from sickness, \$100 death benefit is paid, and free medical attendance is furnished not to exceed one visit per day by one of the company's doctors during the period covered by the insurance. Sick benefits and medical attendance, however, are furnished only to members who have been in the employ of the company four consecutive weeks during the twelve months previous to disability. Death benefits are payable only in case of death of the employee who has worked for the company continuously during three months just previous to death or has worked for the company a total of six months out of the twelve months just previous to his death.

Accident benefits are paid to members or surviving widow, if any, and if none, then to the heirs at law and next of kin as prescribed by the laws of the state of Illinois. Said benefits are as follows:

(E) Twelve Months Benefit.—One dollar per day for twelve months after the first week, for disability due to accident received when not employed otherwise than by and for the company. Benefits claimed for accidents not occurring at the company's plant will be considered on their individual merits.

Disability resulting directly or indirectly from sun-stroke, carbuncles, boils, abscesses, ulcers, blood poison or contact with

poisonous substances or infectious substances, is not classed as due to accident.

(F) Surgical Attendance.—Free surgical attendance by the company's surgeon.

ACCIDENT BENEFITS FOR SERIOUS INJURY

The following special benefits are paid to employes injured at the company's plant:

(G) Death.—For injuries resulting in the death of a member before the expiration of the benefit period as in E, \$1,000 shall be paid.

(H) Hands and Feet.—For injuries causing the immediate severing of, or necessitating, in the opinion of the company's surgeon, the amputation of both hands, or both feet, or one hand and one foot, the member shall receive \$1,000.

(I) For injuries causing the immediate severing, or necessitating, in the opinion of the company's surgeon, the amputation of one hand, or one foot, the member shall receive \$500.

(J) Eyes.—For injuries causing total loss of sight of both eyes the member shall receive \$1,000.

(K) For injuries resulting in the loss of sight of one eye, the member shall receive \$250.

(L) Finger.—For injuries resulting in the loss of two joints of any finger, the member shall receive \$100.

Benefit Effective on Day of Employment.—Accident benefits in paragraph E and special accident benefits become effective as soon as the employe starts work for the company.

Benefits After One Week's Disability.—Benefits as stated in paragraph E begin after one week's disability, which must be certified to by the company's surgeon.

Half Benefits.—One-half the benefits as stated in E will be paid to members rated at less than 15c per hour.

OPERATIONS

Consult Employment Agent.—Any member who desires to have an operation for appendicitis, stricture, hernia, hemorrhoids,

or any chronic trouble; or who desires special treatment for eye or ear trouble, will consult the employment agent before arranging for treatment.

Other Insurance.—If the employe carries other sick insurance making a total indemnity in excess of the employe's regular wages, the company will pay in the case of such employe only such proportion of the benefits in paragraphs A and B as his regular wage bears to the total indemnity.

PHYSICIANS

Accident Cases.—All accident cases at the company's plant must be handled by the company's surgeon.

Assessments.—In partial payment for this insurance every man on the company's weekly pay rolls will be charged 50c on the last day of each month.

Half Assessments.—Assessments amounting to one-half the above will be charged employes rated at less than 15c per hour.

It is provided that in all cases the acceptance by an employe of the full benefits herein provided for shall release all claims against the company for any liability on account of such injuries or sickness, otherwise one-half of the benefits herein provided for will be paid.

In addition to the system of benefit insurance described above, at the same time the company put in force the comprehensive system of pensions by which all employes engaged in any capacity in the operations of the company who have reached the age of 65 years and have been 20 years or more continuously in the service, may be retired from active service and become eligible to a pension; but no person entering the employ of the company later than the age of 45 years is eligible to a pension.

It is further provided that at the discretion of the company any employe who has been ten years or more continuously in the service of the company and has become totally incapacitated for further work by reason of injury or sickness, may or may not receive aid from the pension fund; and if it is granted, it shall be for such amount and for such period as the pension board might determine. The entire amount necessary to support the pension fund is furnished by the company.

THE LEGAL PRINCIPLES INVOLVED

Not only have the numerous commissions and other bodies which have investigated the question of workingmen's compensation given thought and study to the question along economic lines and for the purpose of determining what has already been done or what measures would be suitable, but the legal phases of the situation have been carefully analyzed and studied. We have before us the exhaustive brief of the constitutionality of workingmen's compensation laws compiled by Mr. H. V. Mercer, who was the attorney of the Minnesota Commission; also a report of Mr. Samuel A. Harper, who was the attorney for the Illinois Commission; the brief of Mr. Carmen F. Randolph of New York, which is elsewhere herein referred to; the opinion of Samuel Williston, LL.D., which is appended as "Appendix B" of the Report of the Conference of Commissions held in Chicago, November, 1910, and the article written by Mr. Lindley D. Clark, found in Bulletin No. 90 of the bureau of labor. It is not the purpose of your committee to present an exhaustive brief on the principles involved, but rather in a general way to point out the conclusions which have been reached by those who have made a minute study of the legal phases of the situation, leaving it to those who may be interested in a study of the principles involved to resort to the briefs which we have mentioned or to original research on their part.

It seems to be conceded that whatever authority the legislature may have to adopt the legislation which seems to be needed, it must find its justification in what is known as "the police power." In this connection we quote from the article by Mr. Clark above mentioned—

What the police power is, is not capable of exact definition, since it is subject to growth and change with changing industrial and social conditions. Under it a government may preserve and promote the public welfare by establishing such rules and regulations for the conduct of persons and the management of business and property as may be conducive to the comfort, welfare, and safety of society. Both property and liberty are held on such reasonable conditions as may be

imposed by the governing power of the state in the exercise of this power, and with such conditions and provisions of the fourteenth amendment of the federal constitution, declaring that no state shall "deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," were not designed to interfere; but every exercise of the police power is none the less subject to inquiry as to whether it is fair, reasonable and appropriate; or whether, on the other hand, it is an unreasonable, unnecessary and arbitrary interference with the right of individuals to their personal liberty.

The police power is therefore flexible and adaptable to the needs of the public welfare as they develop. The idea expressed by the words of the fourteenth amendment, "due process of law," is hardly less broad. Though the words differ, the same idea is expressed in the phrase, "the law of the land."

It is not restricted to the test of conformity to process or jurisprudence in use at some fixed past time, since to so construe it would unduly restrict and hamper procedure and deny every quality of the law but its age and render it incapable of progress or improvement. Any legal proceeding enforced by public authority, whether sanctioned by age and custom or newly devised in the discretion of the legislative power in furtherance of the general public good, which regards and preserves the principles of liberty and justice, must be held to be due process of law. The state is not tied down by any provision of the federal constitution to the practice and procedure which existed at the common law. Due process of law is secured if the laws operate on all persons alike.

The provision guaranteeing to all persons the equal protection of the laws is satisfied when all persons or classes in like conditions and circumstances enjoy like privileges under the law. It does not limit, nor was it intended to limit, the subjects upon which the police power of a state may be exerted, but simply requires that legislation shall treat alike all persons affected by it. The greater part of all legislation is special, either in the subjects sought to be ascertained by it, or in the extent of its application. Such legislation does not infringe upon the clause of

the fourteenth amendment requiring equal protection of the laws, because it is special in its character. When legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions. The hazardous character of the business of operating a railway would seem to call for special legislation with respect to railroad corporations, having for its object the protection of their employes as well as the safety of the public. The business of other corporations is not subject to similar dangers to their employes, and no objections, therefore, can be made to the legislation on the ground of its taking an unjust discrimination.

The hazardous nature of an industry is therefore an adequate reason for legislation applying to its conduct, superseding in greater or less degree the right of contract as between the employer and his workmen; and, as already indicated, it is in part on this fact that the New York statute providing for compulsory compensation in specified dangerous employments relies. Laws abrogating the defense of common employment either generally or in designated industries are constitutional; so of laws modifying the defense of assumption of risks and of contributory negligence; and in general it is no objection to a law that it imposes a measure of liability on an employer that is unknown at common law. The defenses of "assumed risks" and "contributory negligence" are frequently abrogated outright in cases where injury results from the failure of an employer to conform to a standard of safety fixed by statute. In other statutes the employe is declared to have, in the defined circumstances, the same rights of action and recovery as if he had not been an employe.

The extent to which such a declaration carries the matter appears from a consideration of statutes that make the proprietors of an undertaking responsible for injuries resulting from its conduct without personal fault. Thus a Nebraska statute makes railroad companies liable for injuries to passengers unless the injury is the result of criminal negligence of the person injured or of his violation of some known rule. The supreme court of the state in upholding this statute, said: "The legislation is justified under the police power of the

state. It was enacted to make railroad companies insurers of the safe transportation of their passengers, as they were of baggage and freight." The Supreme Court of the United States sustained this view, quoting the above with approval and adding: "Our jurisprudence affords examples of legal liability without fault and the deprivation of property without fault being attributable to its owner. The law of deodands was such an example. The personification of the ship in admiralty law is another. Other examples are afforded in the liability of the husband for the torts of the wife, the liability of a master for the acts of his servant." It is obviously only necessary to place on the statute books of the same state the two provisions last cited, i. e., the one giving the employe the status of a third person and one making the undertaker responsible for damages resulting from the conduct of his business—to attain the full extent of the protection by compensation legislation.

A text writer discussing this subject, says: "If the rule of absolute liability is held to be unconstitutional, it must be on the ground that justice and equity forbid that a person be required to make good the loss of another unless some fault of culpability can be imputed to him. * * * The principle that inevitable loss should be borne, not by the person on whom it may happen to fall, but by the person who profits by the dangerous business to which the loss is incident, embodies a very intelligent idea of justice which seems to be in accord with modern social settlement. Moreover, the rule of absolute liability is established in our law in the case of fires caused by locomotives and has been sanctioned by the United States Supreme Court. (165 U. S. 180. See *St. Louis & S. F. R. R. Co. v. Mathews*, 165 U. S. 1.) It also underlies the rule of *respondeat superior*, since the employer cannot relieve himself from liability for the act done by the servant within the scope of his employment by proof of the greatest possible care in the selection of the servant. Logic and consistency, therefore, demand that liability, irrespective of negligence, should not be denounced as unconstitutional. The required element of causation may readily be found in the voluntary employment of dangerous instruments or agencies."

In connection with the above quotation, the construction of the federal employers' liability law of 1906 (and in respect of the points involved the provisions of the act of 1908 are the same) may be considered, as it was discussed in the case of *Howard v. Illinois C. R. Co.* (207 U. S. 463; 28 Sup. Ct. 141). Justice White, delivering the opinion of the Court, said: "Besides, the statute, it is urged, discriminates against all who engage as common carriers in interstate commerce, since it makes them responsible, without limit as to the amount, to one servant for an injury suffered by the acts of a co-servant, even in a case where the negligence of the injured servant has contributed to the result, hence placing all employers who are common carriers in a disfavored and all their employes in a favored class. Indeed, it is insisted that the statute proceeds upon contradictory principles, since it imposes the increased responsibility just stated upon the master presumably in order to make him more careful in the selection of his servants, and yet minimizes the necessity for care on the part of the servant by allowing recovery, although he may have been negligent. But without, even for the sake of argument, conceding the correctness of these suggestions, we at once dismiss them from consideration as concerning merely the expediency of the act and not the power of Congress to enact it."

And Justice Moody in discussing the substantial provisions of the statute in his dissenting opinion pointed out that "the remedy afforded by it is more general to the employe than that given by the common law in several respects"; first, in allowing recovery of damages for death resulting from negligence; second, in abrogating the defense of fellow servants; third, in exacting a provision as to comparative negligence, by virtue of which the contributory negligence of the injured person does not bar recovery, if the employer's negligence is greater, but only serves to reduce the amount of damages recoverable; and, fourth, by making void all contracts relieving the employer from liability for injuries received by the employe in the course of employment; concluding, "thus four doctrines of the common law restrictive of the employe's rights are supplanted by others more favorable to him."

Justice Moody then said: "There can be no doubt of the right of a legislative body, having jurisdiction over the subject, to modify the first three of these rules of the common law in the manner in which this act of Congress does it. They are simply rules of law, unprotected by the constitution from change, and like all other such rules must yield to the superior authority of a statute. They have so generally been modified by statute that it may well be doubted if they exist in their integrity in any jurisdiction. * * * Whenever the legislative power to change any of these rules of the common law has been drawn in question in this court it has been sustained."

It may be recalled in this connection that the statute in question has been declared constitutional in the territories and the District of Columbia; while in respect of the fourth point, relating to contracts of waiver, a decision of the court of appeals of the District of Columbia held this provision to be constitutional. This provision of the law of 1908 was referred to in a very recent case as intended to prevent the evasion of the other provisions of the act.

That compensation legislation prescribes the conditions of contracts between employer and employe and changes largely the legal consequences and incidents of such contracts is indisputable. It seeks to improve the status of the employe, and in doing so devolves upon the employer the duty of administering the benefits provided, whether met at his own cost and expense or made a part of the cost of production and distributed among the consumers of his goods or the public served by his undertaking. But even granting that there is as the result of such legislation a shifting of relationships, it does not follow that it discriminates unfairly between employer and employe. Thus a statute regulating the payment of wages in store orders was said to have a tendency to place the employer and employe upon equal ground, suggesting a previously existing recognizable inequality; in another case the Supreme Court speaks of it as an established and recognized fact that, in the making of contracts, employers and employes do not stand upon an equality. Such inequality is easily a result of the growth of corporations and the centralization of business management employing numerous and widely scattered

employees, which fact legislatures may recognize in providing remedial legislation.

Many of the points of statutory enactment and of judicial construction noted above, together with other legal considerations, were embodied in the brief presented to the Atlantic City conference and in the report of the New York commission, the latter expressing its conclusion in the following language: "It is on these judicial statements and the authorities which follow them that we base our contention as to the power of the legislature to deal with the question of employer's liability on a basis other than fault. That the matter is clear beyond peradventure we do not assert, but that the legislature, on examining its power to enact the legislation we are about to recommend, will agree that such action is within its constitutional powers, we confidently expect."

It seems from the brief of Mr. Harper, who has given this matter particular attention with reference to the constitutional provisions in Illinois, that the greatest question for consideration is whether or not the proposed legislation creating liability without fault and arranging for automatic compensation, could be sustained against the objection that it would deprive either the employer or the employe of the right to trial by jury. In disposing of this question we quote from the brief of Mr. Harper:

In suits at common law where the value in controversy shall exceed \$20, the right of trial by jury shall be preserved. Article II, of the Illinois constitution, provides: "Sec. 5. The right of trial by jury as heretofore enjoyed, shall remain inviolate." "Sec. 13. Private property shall not be taken or damaged for the public use without just compensation. Such compensation, when not made by the state, shall be ascertained by a jury as prescribed by law."

It will be readily seen that were it not for the reservation of this right of a jury trial, all other objections relating to due process of law, etc., would vanish away, because the legislature, in providing a new statutory remedy for an existing condition, might also provide a statutory proceeding, sufficient in itself, for enforcing the liabilities and securing the benefits of such a statute. And while the constitutional provi-

sions quoted *supra*, were not intended to and did not confer any new right or trial by jury, but merely preserved the right as it existed at the time of the adoption of the constitution (*Whitehurst vs. Coleen*, 53 Ill. 247), yet all actions for damages for wrongs to person or property, were triable by jury at common law, and were and are within the application of the Constitutional provisions above quoted.

It has been contended that a compensation law, being in the nature of a new statutory remedy, would not properly be subject to the objection that it deprived any person of the right to trial by jury, if such law included within its terms a sufficient and adequate statutory method of enforcing the provisions, either by arbitration or a trial by the court without the intervention of a jury. As stated by Judge Brannon: "It (the fourteenth amendment) does not prohibit a state from future new legislation, action or proceedings necessary in its judgment in the administration of its government, so long as it bears alike on all similarly circumstanced and be not unusual, oppressive or arbitrary action assailing the essential rights of the person." Brannon on Fourteenth Amendment, Page 143, 144. (See also, as bearing indirectly on this proposition: *Martin vs. Pittsburg etc. Co.*, 203 U. S. 284.)

I am of the opinion, however, that inasmuch as this right of action for personal wrongs was a common law right and triable by jury at the time of adoption of the constitution it is within the application of the constitutional provision, and that a general compensation law would as effectually take away that constitutional right, as would a direct statute expressly abrogating the right of trial by jury in tort cases between master and servant.

The general terms "due process of law," which the constitution does not even attempt to define, are susceptible of a good deal of extension and enlargement by construction, and can be interpreted in such a manner as to embrace all reasonable police regulations which changing conditions seem to warrant; but the right of "trial by jury" can mean but one thing, and the constitutional provision preserving it is singularly inelastic, and it has practically the same scope today that it had when the constitution was adopted.

At the outset it may be noted that the right of trial by jury was not guaranteed in express terms by Magna Charta, but the provision that no freeman should be hurt in either his person or property, unless by the lawful judgment of his peers, or by the law of the land, was so construed. Profatt Jury Tr. Sec. 24.

Of course, after the controversy arises, the parties to the suit may waive their right to a jury and submit the question in controversy to the decision of the court, in which case, the court obtains its power to try the issues of fact wholly from the agreement of the parties. *Travers v. Wormer*, 13 Ill. App. 39. Indeed, our statute provides that "in all cases in any court of record in this state, if both parties shall agree, both matters of law and fact may be tried by the court." Hurd's Rev. Stat. 1908, Page 1628, Sec. 60.

It has been held that the provisions of the federal constitution apply only to the federal courts, and that the states may, if they choose, provide for the trial of civil cases in the state courts without the intervention of a jury, provided, of course, that they shall not transcend the express limitations which they have placed upon themselves in their respective state constitutions. *Cooley's Con. Lim.* 6th Ed. page 29, 30. *Keith v. Henkleman*, 173 Ill. 137. *Spies v. Illinois*, 123 U. S. 131. 24 Cyc. 103.

The right of the jury trial in the state court is not a privilege or immunity of national citizenship which the fourteenth amendment prohibits the state from abridging; it only defends such privileges or immunities as arise from, and are incident to, national citizenship as such. *Brannon on Fourteenth Amendment*, page 82.

The control of questions relating to public health was ordinarily, before the adoption of the constitution, vested in boards or officers who were authorized to proceed in a summary manner without the intervention of a jury, and such cases, therefore, not coming within the application of the constitutional provision, do not now call for or require a jury trial. 24 Cyc. 130. *Metropolitan Bd. of Health vs. Heister*, 37 N. Y. 661.

We have also seen that the state and its agencies may take or injure the property of a person in times

of great necessity or danger in a summary manner without any due process of law or trial of any kind, and without compensation to the person injured, when the general safety or welfare of the people requires it.

The constitution of the state of California authorizes prosecutions for felonies by information without indictment by a grand jury in the discretion of the legislature. The penal code of the state following this constitutional authority makes provision for the prosecution of felonies by information and dispenses with the indictment by a grand jury. In sustaining this legislation under the California constitution, the Supreme Court of the United States said:

“Any legal procedure, enforced by public authority, whether sanctioned by age and custom or newly devised in the discretion of the legislature in furtherance of the general public good, must be held to be due process of law.” *Hurtado v. California*, 110 U. S. 537. See also in *re Debs*, 158, U. S. 564.

We have also seen that pauper acts, imposing a liability for the support of indigent relatives, when there was no common law duty of support, are held to be legal, and not an infringement of any constitutional rights. In addition to the quotation made *supra* from *People v. Hill*, 163 Ill. 186, the court said, with reference to the right of trial by jury:

“The legal liability imposed is statutory, and the statute fixes the procedure by means of which the liability is to be enforced. * * * This procedure may not be in strict conformity with that provided by the English statute or that provided in some other states, but it is not necessarily invalid on that account. It is a statutory liability, and there is no reason why the procedure for its enforcement cannot be provided for in the statute fixing the liability. We are unable to see that the method of procedure adopted violates any constitutional right of appellee. It is suggested that it deprives him of the right of trial by jury. It is only the right of trial by jury ‘as heretofore enjoyed’ that section 5 of article 2 of the constitution provides ‘shall remain inviolate.’ This section was not intended to confer the right of jury trial in any class of cases where it had not previously existed, nor was it intended to introduce it into special summary jurisdictions unknown

to the common-law and which do not provide for that mode of trial. *Ward v. Farwell*, 97 Ill. 593; *Cooley's Const. Lim.* (6th Ed.) 504, and authorities cited in note 2." *People v. Hill*, 163 Ill. 186, 192, 193.

In my judgment, this legislation presents the farthest extreme to which the state of Illinois has gone in limiting the right of trial by jury, and it finds its only justification in the statement by the court that the legislature may, in the exercise of the police power, change what is a moral duty into a legal liability, thus lessening a public burden.

There are a great many other cases in which the right of trial by jury has either been limited or entirely denied, such as confessing of a judgment, entering into a recognizance, giving a mortgage, which, when recorded, may be enforced by *scire facias*, the imposition of taxes or assessments, the fixing the amount of liability under a cost bond, cases in chancery, etc. It is also the usual practice, in most of the states, to assess damages for the taking of a right of way, without the intervention of a jury, and the supreme court of Pennsylvania has held a law constitutional which provided for assessing damages in the case of property destroyed by mobs, by an inquest of six men on inspection out of court. The decision is based on the ground that the constitutional guaranty of the right of trial by jury applies to the trial of issues in court, and not to an assessment of damages out of court. *Ross v. Irving*, 14 Ill. 170, 181. In the matter of the *Pennsylvania Hall*, 5 Barr. 204.

In my judgment, there would be nothing inconsistent with any theory of natural justice in taking away the right of trial by jury, so far as the servant is concerned, in cases where the injury occurs through the negligence of an agent or employe of the master, believed reasonable and in good faith by the master to have been competent at the time of hiring. In other words, the doctrine of *respondeat superior* in cases of tort by an agent or servant of the master, might be abrogated and the doctrine of compulsory compensation substituted by legislative enactment in such cases.

In all cases where the injury results from the direct negligence or intentional act of the master, the

servant would seem to have a clear right to his common law remedies against him, including the trial by jury. The extension of the liability of the master, however, to cover the negligent acts of a servant or agent, is a comparatively recent, judge-made privilege given to the employe, and what has thus been given him, might in reason be taken away, in the exercise of the reasonable police power of the state.

Even this opinion, however, is clouded by the consciousness that the doctrine of respondeat superior, and the employe's rights thereunder existed at the time of the adoption of the constitutional provision, and might therefore be held to be within its application.

THE COMPENSATION RATE

The matter of adjustment of the scale of compensation is an extremely difficult one, and in the opinion of your committee is such that no one man will be able to propose a plan which will be entirely equitable and just when considered from the standpoints of the various interests involved. All that it is possible to do in that connection is to present the matter along general lines and then to suggest the scale of compensation which adheres as nearly to general principles as may be. On this subject, Mr. Randolph says:

An initial compensation law will probably select certain industries whose hazards are widely advertised and whose workmen belong to influential trade unions. As in these industries will be found many establishments representing large concentrations of capital, a remarkably liberal compensation may be advocated. But it should be clearly understood that an initial rate must be fixed, not only in regard to all the establishments affected but in anticipation of the ultimate extension of the scheme to industries in general, if not even to domestic service, as in Great Britain. For example, accidents to farm hands attract but little attention. Few states, if any, require them to be reported; yet agriculture is wholly, or on its mechanical side, covered in important foreign systems. They should not be permanently ignored here. Indeed, the Wisconsin labor bureau has already made some inquiry into accidents of agriculture and reports for 1907, 293 accidents to

farm hands and 684 to independent farmers. This means that agricultural employment shows 977 casualties ranking, in respect to mere numbers, next to railway employment with 1305.

If today the railroad companies may be obliged to compensate the brakeman, tomorrow the farmer may have to do the like for his laborer. And the company and the farmer will have to pay on the same basis, for one of the fixed points of compensation schemes is that they shall operate equally and uniformly in respect to all workmen included, and not unequally and discriminately according to the occupation or financial position of the employer. The history of pension legislation teaches that if there be any alteration in the original rate, we should expect an increase rather than a reduction, so on all accounts we are well advised that an initial rate should, as a matter of policy, be moderate. But a moderate rate is not only commended by policy. It is dictated by the law of the constitution which forbids spoliation under forms of law. If the master can be made responsible for injuries beyond his fault, his burden must be, at least, reasonable and not exorbitant.

Now we have shown that the compensation rate must be uniform for all workmen in order to insure to everyone the equal protection of the laws. This quality of benefit for workmen involves an inequality of burden for employers, who, rich and poor alike, must pay the same proportional rate. And an unequal incidence of burden may occur in other ways. A, employing 50 workmen in a dangerous trade, is subject to a far heavier risk at \$2,000 death compensation than B, who employs 1,000 in a safe one, would incur at \$4,000. C, with a dozen plants, might weather a catastrophe whose resulting liabilities would bankrupt B, were his single plant destroyed.

While I do not assert that the unavoidable inequality of burden would necessarily amount to a denial of "equal protection" and thus block any comprehensive scheme, I do insist that a compensation figure based upon the ability of well-to-do employers or of great industries would work an unlawful discrimination against their weaker associates. All employers would not be "treated alike under substantially similar conditions."

The moderate rate may be broadly described as one which each or every industry or employer within the actual or the potential purview of a compensation scheme may be lawfully required to bear; a rate imposed on the railroad company today must be one which can later be laid upon the small manufacturer.

Each commission which has made a study of this question has made an effort to solve the question of rate. What seems to be the general conclusion along this line may be gathered from the following: November 1910 a conference of commissioners on compensation for industrial accidents was held at Chicago. This conference met in response to a call of the Massachusetts commissioners who desired the opinion of the commissions of the various states as to certain specific questions under consideration by the Massachusetts commission in preparing a bill for the January 1911 meeting of the state legislature. Commissions of eight states, Illinois, Massachusetts, Minnesota, Montana, New Jersey, New York, Ohio and Wisconsin were represented and Connecticut was represented by a special delegate. The United States employers' liability commission and the United States bureau of labor were represented, and there was present a special committee of commissioners on uniform state laws charged with the preparation of uniform workmen's compensation law. The conference comprised large employers, small employers, representatives of labor, legislators and special students on workmen's compensation legislation. Certain questions relative to the features of the compensation law proposed by the Massachusetts commission were proposed to the conference on the question of rate and duration of compensation. The questions and answers were as follows:

4. Shall compensation be paid in a lump sum or in installments:

(a.) Temporary disability? Installments.

(b.) Permanent disability or death? Installments with right to commute after given time with approval of some public official.

5. Amount and duration of compensation?

(a.) Temporary disability? Fifty per cent of the impairment of wages; maximum of \$10 per week,

minimum of \$5 per week; or if wages less than \$5, then full wages (or 66 2-3% of wages up to \$7.50 of wages per week, then 50 per cent of balance until compensation amounts to the maximum of \$10 per week, maximum). Payments not to extend beyond period of 300 weeks.

(b.) Permanent disability? Same as temporary disability.

(c) Partial permanent disability? Fifty per cent of impairment of wages; maximum of \$10 per week; payments not to extend beyond period of 300 weeks.

(d) Death?

(1) Total dependents?

If orphans, 50 per cent of wages of deceased.

If widow alone, 25 per cent of wages.

If widow and one child, 40 per cent of wages.

If widow and two children, 45 per cent of wages.

If widow and three children, 50 per cent of wages.

If widow and four children, 55 per cent of wages.

If widow and five children or more, 60 per cent of wages.

If widow, father or mother, 50 per cent of wages.

Children under 16 years of age only to be included and only during period they are under 16 years of age.

Maximum of \$10 per week, minimum of \$5 per week, or if full wages less than \$5 their full wages (or 66 2-3% of wages up to \$7.50 of wages per week, then 50 per cent of balance until compensation amounts to \$10 per week, maximum). Payments not to extend beyond period of 300 weeks.

2. Partial dependents? Fifty per cent of the portion of the wages contributed by the deceased to the partial dependents.

(2) No dependents? Expenses of last sickness and burial, not exceeding \$200.

6. Length of waiting period? Two weeks, during which period employer shall furnish medical

treatment or hospital care to an amount not exceeding \$100 in value.

Whether any proposed plan of compensation for all industrial accidents would not be an excessive burden upon the industries, is a question that can only be answered after an exhaustive study of the statistics with reference to accidents and the relation which compensation for those accidents under the proposed plan would have to the employer's business. This as far as the employer is concerned is the manner in which the question of rate of compensation must necessarily be finally determined in the opinion of your committee.

In considering the sufficiency of the rate of compensation from the standpoint of the employe, regard should be had to what is now paid on the average to employes meeting with injuries in industrial accidents. The New York commission made an extended investigation into this branch of the subject, and a brief summary of their findings is set forth in Bulletin 90 of Bureau of Labor, page 693. In connection with the objection that a small proportion of the workmen injured by accidents of employment get substantial compensation, the commission investigated 181 cases in which married men lost their lives in industrial accidents in 1907 and 1908 in Erie county, in the Borough of Manhattan. Of this number it was found that the families received nothing in 56 cases; that they received \$100 or less in 12 cases; from \$101 to \$500 in 52 cases, from \$501 to \$2000 in 19 cases, more than \$2000 in 12 cases, while suits were pending in 30 cases, so that in 79 per cent of the closed cases the families received \$500 or less, and in only 7.9 per cent of such cases did they receive more than \$2000, or an amount equal to three times the average yearly earnings of the workmen considered. An investigation of 1040 work accidents by the state labor department, in which total losses and payments were ascertained, showed that in 404 of the 902 cases of temporary disability (lasting from one week to more than one year) nothing was received by the injured person, not even medical expenses; while in 304 cases the amount recovered from the employer was less than one-half the loss of wages and expenses of the injury.

In 71 cases there was permanent partial disability, reducing the earning capacity of the employe in varying amounts. Of this number 18 received nothing, 22 received \$100 or less, 14 received from \$101 to \$500, 5 received from \$501 to \$2000, while one person received more than \$2000; suits were still pending in 11 cases. In 902 cases of temporary disability there was a wage loss of \$66,800, besides medical expenses amounting to \$20,000, while all payments by employers amounted to but \$25,339, or less than 30 per cent of the losses and costs. Payments in cases of permanent partial disability made a somewhat better showing, approximating 34 per cent of the actual losses, though this omits from consideration the depreciated earning power; while in 10 cases of permanent total disability, computed on a basis of three years' wage loss, the payments by employers amounted to but 9.7 per cent of the losses and costs. Data obtained from other sources indicate the same general condition of inadequate compensation for losses suffered.

That the system of liability and damage suits entails waste is shown by the fact that the expenditures of 327 firms in the state in 1907, employing 125,995 men, amounted to \$192,538 on account of accidents, accident insurance, legal expenses, etc., of which the amount paid to the persons injured was but \$104,643, or 54 per cent of the employers' outgo in this connection. Premium receipts and payment of losses by nine insurance companies that keep separate accounts of their employers' liability business show that during 1906, 1907 and 1908 they took in as premiums \$23,523,585 and paid out in insurance \$8,559,795, or but 36 per cent of the premiums received. In connection with attorneys' fees, which are frequently contingent on recoveries, it was shown that in 14 of the 51 cases investigated the fee was less than 25 per cent of the recovery, in 14 cases it was 50 per cent or more, while in the remaining 23 cases it was more than 25 per cent and less than 50 per cent.

The question of the cost to the employer of a compensation system as compared with the cost of the present system received consideration, the investigation of this phase of the question being conducted by the state bureau of labor statistics. Data were

secured from 52 firms, employing about 29,000 persons, from which a comparative study was made, showing the actual cost of accidents during the year 1907, and the cost under a compensation scheme which allowed three years' earnings in case of death and half earnings during disability, making up the loss of wages where partial disability reduced the earning capacity. From the results of this investigation the report concludes that "even with the most liberal allowances for possible understatement on the cost of compensation side, it is impossible to interpret the figures as affording anything but very strong evidence that large manufacturing concerns could pay compensation on such a scale as that here used, which is fully equal to the present English system, at no greater cost than many of them are now actually incurring for accidents, and probably in some cases for less." It is assumed that this conclusion should not be made to apply to small employers.

CONTRIBUTION TO FUND BY EMPLOYEES

While there are the strongest reasons in favor of the contribution on the part of the employe to the fund out of which the workingmen's compensation is to be paid, a recent research by legislative commissions or other parties has disclosed no way in which this may be brought about by legislative enactment. It is recognized that such a scheme would be advisable for the reasons that it would remove from such schemes all idea of charity and would put the employe on a basis of independence with reference to workingmen's compensation. Such scheme would also be conducive to the exercise of care on the part of servants knowing that while the injured person would be compensated under the system, part at any rate of the cost of the accident would fall on the employe generally. It is further believed that it would reduce the element of fraudulent claims and simulation of injurious effects and malingering for the reason that honest and conscientious employes having a personal interest in the fund by reason of their contribution thereto, would be on the look-out for such cases of fraud and malingering. It is true that this principle is enacted into the Montana law above mentioned, but it is the opinion of those who have given consideration to the subject that the pro-

visions of the Montana law will not stand the constitutional tests and that when the question is brought before the supreme court of that state the act will be held unconstitutional.

On the question of contribution by the employe, Mr. Randolph in his brief herein referred to in answering the question, "May an American legislature follow the example of Germany and Austria, and oblige a workman to devote a fraction of his earnings to an accident fund?" says:

Observe that there is no question here of forced contributions to present needs as where a capable head of a family is ordered to pay for their maintenance. The immediate question is whether the state may prescribe thrift in contemplation of a possible disablement; and this is a branch of the broader question as to its prescription in view of the relatively probable incapacities from sickness and old age. But even if the state may prescribe for all men a measure of the latter sort, it does not follow that it may compel a "workman" to contribute to an accident fund, which is created for a "class" as distinguished from the community at large. The solidarity of "labor" is being strenuously advocated; it is being realized in some degree, but it is not yet assimilated in our jurisprudence to the solidarity of the family, on the one hand, or to that of the community on the other. However, if it shall be held that a legislature can so reverse our traditional conceptions of legal responsibility as to compel the master to compensate for all accidents, regardless of their cause, this relatively minor matter of workmen's contribution may well take the same course.

If workmen cannot be affected with direct contributions to compensation it may happen that indirect contributions will be obtained by employers by shaving the wage scale, in case the compensation rate is so high as to necessitate searching economies in cost of production.

While it may be true that our courts will come in time to relax their views on this branch of the subject, in the present state of the law, it would be fatal, in the opinion of your committee, to any such law to incorporate that element as a compulsory feature, and so in any bill that is framed, if the idea of contribution by the employe is to be incorporated at all it must

be done in such a way that it is accomplished by the consent of the employe. In other words, it must be left as a matter of contract between the employer and the employe.

CLASSIFICATION OF INDUSTRIES

Since it appears that any remedial legislation of the kind under consideration must look for its support to the police power of the state, the question of the classification of industries is one for grave consideration. No doubt very much of the legal difficulty would be removed if the law were made universal in its application; at the same time a mandatory statute made applicable to all employers of labor might be held unreasonable by the courts for manifestly a large number of the small industries of the state involve no particular hazard to the employe, and it is a fundamental principle that any exercise of the police power of the state must be reasonable in view of the conditions which the legislature affects.

Under the law adopted by the state of New York the legislature relying for its authority in passing the workingmen's compensation act on the police power, has endeavored to select certain industries declared by the act to be hazardous and consequently a proper subject for such legislation. Mere declarations by a legislature that certain industries are hazardous does not make them so as a matter of law, and it still remains for the court to determine whether such classification made on the basis of the hazard of the trade is a reasonable one.

It may be interesting to note that the supreme court of New York, which is one of the inferior courts in that state, has had occasion to pass upon the constitutionality of a new workingmen's compensation law of that state. This was in the suit of *Ives v. The South Buffalo Railway Company*, in the supreme court of Erie county. The decision in this case is as follows:

Pound, J. The answer challenges the constitutionality of chapter 674, Laws 1910, entitled "An act to amend the labor law in relation to workmen's compensation in certain dangerous employments." This chapter applies only to workmen engaged in manual or

mechanical labor in certain employments declared by the act to be dangerous by reason of inherent, necessary or substantially unavoidable risks to life or limb, in which it is deemed necessary to establish a new system of compensation for accidents to workmen (Sec. 215). Among such employments is included: "6. The operation on steam railroads or locomotives, engines, trains, motors or cars propelled by gravity or steam, electricity or other mechanical power, or the construction or repair of steam railroad tracks and roadbeds over which such locomotives, engines, trains, motors or cars are operated" (Sec. 215). Plaintiff brings himself squarely under the provisions of this act by alleging facts that establish, as admitted by the answer, that, while employed by defendant as a switchman, he was injured in the prosecution of his work, without negligence on the part of the defendant, and "without serious or willful misconduct" on his part, but solely by reason of a necessary risk or danger of his employment, or one inherent in the nature thereof. (Sec. 217).

Prior to the enactment of the statute above cited he would have been without remedy. By virtue of its provisions he is entitled to recover according to a fixed scale of compensation without establishing that the employer is at fault in any way (Sec. 219 a). The plaintiff demurs to the answer on the ground that it is insufficient in law on its face. This act is based on the workmen's compensation act of England, and its enactment is due to the fact that the common law affords no available remedy for injuries occasioned by industrial accidents not attributable to the negligence of the employer. Defendant maintains that, under our system of constitutional government, the incorporation into our law of the English law of workmen's compensation is beyond the powers of the legislature: First, because the act in question deprives the defendant of liberty and property without due process of law, and denies it the equal protection of the laws in contravention of the Constitution, and article I, section 6, of the constitution of this state; second, because it violates the right of trial by jury guaranteed by article 1, section 2, of the constitution of this state; third, because it limits the amount recoverable in actions to recover damages for

injuries resulting in death in contravention of article 1, section 18, of the constitution of this state.

It has well been said by Mr. Justice Brown of the Supreme Court of the United States, writing the opinion of the court in *Holden v. Hardy* (169 U. S., 366, at p. 387), that "while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and the Constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment, should not be so construed as to deprive the states of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land."

It is well established that statutes applicable solely to railroads do not deny the railroads the equal protection of the laws. A classification of "dangerous employments" for the purpose of the act must be upheld. *Missouri Ry. v. Mackay*, 127 U. S. 205.

But the act is attacked chiefly because it imposes liability without fault. Our jurisprudence offers examples of legal liability without fault, and the deprivation of property without fault being attributable to its owner. The law of deodands was such an example. The personification of the ship in marine law is another. Other examples are offered in the common law liability of the husband for the torts of the wife, or liability of the master for the acts of his servants. *The Osceola*, 189 U. S. 158; *Chicago, R. I. & P. Ry. v. Zerneck*, 183 U. S. 582.

In the case last cited a statute making railroad companies liable for all damages inflicted upon the person of passengers while being transported over its road, except in cases where the injury arose through the criminal negligence of the person injured, was upheld primarily on the ground that the railroad company being a domestic corporation of Nebraska accepted with its incorporation the liability so imposed by the laws of the state and could not complain of it. But the court, in its opinion, cites with approval the opinion of the supreme court of Nebraska; "The legislation is justifiable under the police power of the state, so it has been held. It was enacted to make railroad com-

panies insurers of the safe transportation of their passengers as they were of baggage and freight; and no good reason is suggested why a railroad company should be released from liability for injuries received by a passenger while being transported over its line while the corporation must respond for any damages to his baggage or freight."

The legislature may alter or repeal the common law. It may create new offences, enlarge the scope of civil remedies, and fasten responsibility for injuries upon persons against whom the common law gives no remedy. *Bertholf v. O'Reilly*, 74 N. Y. 504.

It would seem to follow that it might make those who employ workmen in dangerous callings insurers to some extent of the safety of such workmen. The common law imposed upon the employe entire responsibility for injuries arising out of the necessary risks or dangers of the employment. The statute before us merely shifts such liability upon the employer. That the legislature has the power to deal with the question of employers' liability on a basis other than fault is not clear beyond peradventure, but every presumption is in favor of the constitutionality of the act, nor do I find its constitutionality so doubtful as to warrant this court in holding that such action is not within the constitutional powers of the legislature.

I have examined the authorities cited by the learned counsel for the defendant. They merely point out the shifting character of the border line between statutes which are upheld by the court as being a legitimate exercise of the legislative power to pass all manner of necessary and wholesome acts for the protection and well-being of the public, although such acts may interfere with personal liberty and the right to do what one will with his own, and statutes which are held by the courts to interfere without warrant with the privilege of pursuing an ordinary trade or calling, and therefore to be unconstitutional and void.

In the case of *Lochner v. New York* (189 U. S. 45) the prevailing and dissenting opinions contain a full discussion of the principles underlying the decision of such cases. The court held in that case that there is no reasonable ground on the score of health for interfering with the liberty of the person or the right of free contract by determining hours of labor in the

occupation of a baker. The same court had already held in *Holden v. Hardy* (supra) that there was reasonable ground on the score of health for interfering with the liberty of the person and the right of free contract in determining hours of labor in the occupation of workingmen in smelters. In the former case the public good did not, in the judgment of the court, require the restrictive legislation; in the latter case it did. In the latter case Mr. Justice Brown says that, "This court has not failed to recognize the fact that the law is to some extent a progressive science. * * * *
Classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection."

As to the objection to the statute that it limits the amount recoverable in death cases, it is enough to say that it is for the plaintiff to make the claim of unconstitutionality in this regard, as it is the plaintiff alone who is prejudiced thereby, and it does not lie in the mouth of the defendant to raise this objection to the statute.

Demurrer overruled, with costs and judgment absolute for the plaintiff directed on the pleadings, with costs.

It seems that the idea of specific classification of industries as adopted in the New York act has successfully withstood the first attack upon it, and it remains to be seen what the court of last resort in New York will do with the question.

The Minnesota idea as expressed in a tentative bill recommended by the majority of the commission of that state, is to make the selection of the hazardous occupation automatic; that is, it declares whenever an accident occurs in any occupation that then in that case the statute would apply. It hardly appears how this sort of classification can be supported by reason, because under such a classification any occupation, no matter how inherently free from hazard it might by its nature be, in case of an accident happening to an employe in that occupation, it would forever afterwards be a hazardous occupation. For instance, applying that law, should a school teacher in passing through the building trip and fall, injuring himself, forever afterwards under that law, school teaching would be a hazardous occupation. Advo-

cates of this theory insist, however, that the language would not be susceptible of so broad a construction as we have indicated, for the reason that they insist that a qualification that the accident must happen "in the course of employment" would eliminate such casual accidents as might occur in an occupation and as do not constitute a hazard of that business, so that the act would not be applicable where the injury was one which might as well occur to a person outside of the occupation as to one engaged in it.

A workingmen's compensation law applicable to all employers of labor might also be too great a burden upon the vast number of small industries in the state. It has been suggested that a law might be framed which limited its application to employers of labor who employ more than a given number of employees at any one time. Reliance is had for such a classification upon the decision of the supreme court of Illinois, upholding that sort of classification with reference to the application of the law of Illinois with reference to mine inspections. That law was limited in its application to mines employing five or more men at any one time. The case is that of *St. Louis Consolidated Coal Company v. Illinois*, 186 Ill. 134, which was afterwards appealed to the Supreme Court of the United States on the constitutional question involved. The decision is found in 185 U. S. 203.

While in that particular case the supreme court of Illinois, and also the Supreme Court of the United States, has held such classification is reasonable and within the authority of the legislature under the police power, the peculiar business of mining is such perhaps as to warrant the legislation in that particular industry.

It seems to your committee that, unless the danger and liability of injury increases with the number of men employed in an industry, such classification could not be held to be reasonable, and arbitrary and needless. The statistics with reference to manufacture show that the ratio of injuries in the industries generally, does not increase proportionately with the increased number of men employed, but that the contrary is in fact the case. The proportion of injuries in small industries is really greater than in the

large industries employing great numbers of men. If this is true, we are unable to see how a limitation in the workmen's compensation act to apply only to those industries employing more than a specified number of men could be held to be reasonable and needful legislation with regard to the industries covered within the meaning of the police power.

The attorney for the Illinois commission has recommended that there be no classification of industries but that all be covered excepting that the operation of the law be limited to those industries employing more than a specified number of men.

It will be seen from this brief discussion of the subject that under the law as it exists, no matter from what position the subject is approached, serious obstacles seem to be in the way. Your committee is of the opinion that the question will have to be determined by the courts finally.

THE REMEDY

In view of what is desired to be accomplished and the peculiar constitutional restrictions and limitations obtaining in the various states, what legislative action, if any, is advisable?

It seems to be the conclusion that any safe legislation, although perhaps compulsory in form, must be elective in fact and should embrace all industries, although it might be that a limitation of the application of the act to industries employing more than a specified number of men would meet with judicial approval.

A bill, "compulsory in form, but elective in fact" would mean a bill providing for the payment of compensation for all industrial accidents upon the basis of the scale to be included in the act, such bill, however, to reserve to both employer and employe their rights at common law, but providing as to the employer that, if he pursues his common law remedies and refuses to make settlement of compensation under the act, his common law defences shall be limited (the limitation to be fixed by the act) and with the further proviso as to the employe that he shall be presumed to have accepted the compensation plan unless he expressly contracts to the contrary; and that any acceptance by

him of compensation at common law shall bar him from all benefits to the compensation provided in the act. Or it might be made elective in form, with the same penalties to follow an election not to pay the compensation provided.

This is the plan proposed to the Illinois commission by Mr. Harper, its attorney, and in explanation of it he further says:

It will be observed that this plan would secure to both parties their constitutional rights of due process of law and trial by jury, with a penalty added for the purpose of inducing them to forgo such rights and accept the statutory compensation.

I am of the opinion that this plan of limitation upon the common law rights of the parties may be properly included in the form of a proviso in the compensation act without violating that provision of the constitution, which provides that no act shall embody more than one subject, which shall be expressed in its title, because it is manifest that the modification of the common law rights of the parties is in furtherance of the general purpose of the act, viz; to provide certain, definite and automatic compensation for industrial accidents. *Larned v. Tierman*, 110, Ill. 173.

It will be equally obvious that when these common law rights are reserved in this way, the other constitutional questions in regard to taking one's property without due process of law, trial by jury, unreasonable classification, etc., are practically eliminated, because the act, as a whole, is in effect elective and does not rest for its authority upon the police power of the state. In other words, if the reservation of the common law rights were not made, the act could find its justification only in the police power of the state, and this would involve the necessity of demonstrating that any classification made was reasonable, and that although the property of the employer might in effect be taken away from him to compensate the injured employe, there existed an overruling necessity for such action, justifying the course of the legislature in imposing this burden upon him; whereas, under a bill drawn as above suggested, no objection could be made on the ground that the act was not due process of law, because the courts would say that due process was reserved to him by the act itself, and no vital objection could be

made to the classification, because if the act is in effect elective those persons covered by its provisions would have the right, by their own volition, to place themselves in the same class with those who were not in terms covered by the act.

VOLUNTARY ASSOCIATIONS

We wish to present, for your consideration, a suggestion that voluntary associations be organized in the different National Metal Trades Association districts, each member to contribute his fair proportion to a compensation fund of such a size to properly take care of all accidents and sickness among the employes.

In this way we could do away with the necessity of legislation and soon quiet the demand for it.

CONCLUSION

Owing to the limited time which we have had to devote to this subject, and the extensive scope of the inquiry and the many difficult and important questions of economics, policy and law involved, this report is not an exhaustive treatment of the subject.

We have endeavored, however, to show what has been accomplished in foreign states, what has been accomplished in this country, and generally within what limits legislation would be warranted by law.

It is obvious that nothing in the way of reform can be accomplished without an honest effort both on the part of employers and employes to that end, and in view of the fast forming public sentiment in favor of more uniform and equitable laws governing the relation of master and servant, and the liability for and the right to compensation for personal injuries growing out of that relation, we believe that such reasonable legislation as may be the result of such effort will be given that construction by the courts that is in furtherance of the plan, and in the interest of the common good, without too great an adherence to the technical construction of the present law relating to the subject.

While it might seem desirable for this committee to compile a bill which would secure the approval of the Association,

it would certainly be very difficult to perform this task in a way which would be acceptable to various states of the country in which the membership of the Association is found. The essentials have been dwelt upon in this report, and are generally covered in the several bills which are being considered by state commissions, or in some cases have been presented for legislative action. The committee therefore is content with referring, as appendices to this report proposed bills in Illinois, Minnesota, Ohio, Wisconsin, etc.

In conclusion your committee members will say that they are inclined to favor, if it is possible adequately to secure it, a provision in the acts adopted by the several states for a contribution by the employe to the cost of compensation, not so much for the purpose of relieving the employer of a part of the cost, as for the purpose of enhancing the amount of compensation to be paid beyond what is now recognized as a fair proportion to be borne by the employer in any event, and for the purpose of giving to the employe that independence and that interest in the operation of the proposed law which would come solely from the fact that the compensation was furnished in part by his own contribution.

Such a provision is highly desirable, but under the law in all probability must be provided for by contract between the employer and his employe; and any act dealing with this relation should be so framed as to recognize and encourage the making of such provisions, and when so made, under the control, however, of some proper state authority, they should supersede the statutory provisions and stand also in lieu of the common law rights and obligations.

DATA SECURED

For the purpose of gathering statistical information in regard to what is being done by manufacturers to better protect their employes and themselves against accidents; to what extent they are depending upon liability insurance; what percentage of them belong to mutual insurance associations; what percentage have established employes' aid societies or have adopted other insurance systems for the benefit of their employes, etc., seven classi-

fied sets or groups of inquiries, arranged alphabetically from "A" to "G," were sent out to each of 200 manufacturers, and from the replies received, has been compiled the information distributed herein, under the several classified headings.

(A) WHAT METHODS ARE YOU EMPLOYING IN YOUR ESTABLISHMENT TO PROTECT YOURSELF AND YOUR EMPLOYEES AGAINST ACCIDENTS?

Number of inquiries sent out, 200.

Number of replies received, 176, or 88 per cent.

12 per cent did not reply at all.

3 per cent were too indefinite to be of value.

3 per cent stated that they were not employing any methods for purposes stated above.

43 per cent reported as employing the usual precautions, such as protecting exposed gears, saws, belts, and other dangerous parts; causing notices to be posted and advising caution on the part of all employes.

20 per cent indicate that they depend upon some form of accident or liability insurance for protection.

7 per cent claim to employ some form of insurance, also to adopt the usual safety appliances.

To be more explicit, some of their replies are quoted as follows:

It is our custom to furnish hospital, surgical or financial assistance, but such actions are voluntary, not compulsory.

We make monthly deposits in banks to an emergency fund, which exceeds the amount we formerly paid in insurance premiums. We adopted this plan because the insurance companies wanted to more than treble our annual premiums.

We pay for insurance and doctor bills, but nothing for lost time.

Periodical inspection of plant and emergency service.

General accident policy, covering employes inside and outside of shop. For death by accident \$10,000. Total liability for any one accident \$20,000.

(B) DO YOU CARRY LIABILITY INSURANCE?

Replies were received from 98 per cent of the manufacturers to whom inquiries were sent.

87 per cent of the replies were in the affirmative.

11 per cent replied "no."

2 per cent stated that they carried their own liability insurance.

One of the latter states in explanation that under the old method of liability insurance, while the first aid was always allowed, a question in regard to compensation for loss of time usually arose, causing dissatisfaction among the employes. For the past year they have been carrying their own accident insurance and report results as follows:

We give first aid and further aid if necessary, allowing either half or full time, according to the nature of the accident. The cost has been less and results more satisfactory.

One manufacturer reports that their liability insurance has been discontinued since August, 1910, but does not make any further explanation. Another replies; "No—except boiler insurance."

(C) IS THERE AN EMPLOYES' AID ASSOCIATION CONDUCTED IN CONNECTION WITH YOUR ESTABLISHMENT?

1. Is membership in such association compulsory? If not, what proportion of your employes is affiliated with your association?
2. Does your company contribute to the support of such aid association? If so, to what extent?

Replies were received from 197 manufacturers and show that 51 companies, or 26 per cent of the 197, do have employes' aid societies conducted in connection with their establishments,

while 74 per cent do not.

Only 15 per cent of those having such associations state that membership is compulsory. The other 87 per cent who do not compel such membership, claim that 57 per cent of their employes are affiliated with the societies.

Of the 51 companies referred to above, 29, or 57 per cent, do not contribute to the support of the association.

Twenty-two companies, or 43 per cent, do contribute, but do so in such diverse ways and varying amounts as to preclude the possibility of computing the amounts, on a percentage basis, or deducing a comprehensive analysis of the value and equity of their contributions, as shown by the replies recorded below:

Some companies claim to contribute 10 per cent of the total disbursements made by the association.

Others contribute amounts ranging from 20 per cent to 75 per cent of the total disbursements.

Another contributed \$500 to start with.

Some pay a percentage.

Others pay all liabilities of the association in excess of dues collected.

The following are some explanations received:

We pay an amount equal to one week's wages for each year a man has worked for the company as part of death benefit.

Contribute for accidents, not sickness.

We pay all operating expenses of the association and for medical attendance.

We pay wages, hospital and doctors' bills.

We replenish treasury when funds run low.

Our employes' aid association was discarded when our insurance plan was adopted.

(D) HAVE YOU ESTABLISHED AN INSURANCE SYSTEM FOR THE BENEFIT OF YOUR EMPLOYEES?

1. What does the insurance cover?
2. Does it cover a sick benefit?
3. Does it pay any certain amount for certain risks?

4. Does it pay death benefits?
5. Does the employe contribute? If so, how much?
6. Does the company contribute? If so, how much?

One hundred and ninety-two replies were received, or 96 per cent of a possible 200. Twenty-six companies, or about 14 per cent of all who replied, claim to have adopted some insurance system for the benefit of their employes, and from their replies the following answers are compiled:

1. Each system covers one or more of the following liabilities; accidents, sickness, disability, death, pensions.
2. 62 per cent of their systems cover sick benefits.
3. 31 per cent pay a certain amount, for certain risks.
4. 80 per cent pay death benefit, but two of them specify for accidental deaths.
5. 80 per cent require their employes to contribute, but no uniform basis or system for computing such contributions seem to have been adopted.

Three of the systems require employes to pay all.

Three of the systems require employes to pay 75 per cent.

Two of the systems require employes to pay from 20 per cent to 90 per cent.

One of the systems requires employes to pay 1 per cent of earnings, not to exceed 30c per semi-monthly payment.

One of the systems requires each employe to pay 50c per month.

6. 62 per cent of the companies also contribute. Some of them the clerical work; others make up deficits, if any.

Eight of the 26 companies contribute 50 per cent or less of the cost of their respective systems.

One contributes \$1,500 annually.

One contributed \$500 to start with.

One contributes 50c per month per employe.

Five pay all.

Six do not pay anything.

(E) DO YOU HAVE A PENSION SYSTEM?

1. If so, on what plan is it run?
2. What does it cost?

3. Does the company stand all or part of the cost?

There were 190 replies to the 200 inquiries.

Only five companies report as having adopted pension systems, and little additional information is obtained from their replies except the fact that more than 97 per cent of them have not adopted pension systems.

The following is taken from replies received:

1. Two companies base pensions on earnings and length of service. One company varies pension according to needs. The remaining two companies do not furnish any information in regard to plan on which their pension systems are run.
2. Only one company gave information in regard to cost, viz: "At present we have 28 pensioners, whose pensions run from \$20 to \$55 per month, making the total cost per month, about \$649."
3. Four of the above companies pay all the costs; the other company does not state.

Some of the replies were:

We keep the old men on as long as they can come to work. So far, all have died in the harness.

We endeavor to keep old employes on easier work.

(F) IS THERE A RECORD KEPT OF THE NUMBER OF ACCIDENTS?

1. If so, what was the cost, either in voluntary payments, or as a result of lawsuits?

Replies received from 81 per cent of the 200 inquiries.

Sixty-two per cent report that they do keep records of accidents. Thirty-eight per cent do not keep such records, except of notices sent to the insurance companies. One report states explicitly, "\$31 yearly average for the past three years."

Reports from 34 manufacturers show their combined costs for accidents in one year to be \$22,333.24, an average cost per company of \$656.86 per year.

Another group of 192 accidents, cost seven companies \$3,256.18, an average of about \$170 per company per year, but the actual cost to each of the several companies varied from \$2 to \$364.30 per year.

One company paid in one year for 271 accidents and one accidental death, \$3,258.10, but the amount paid for the accidental death was not given and as their death benefits are based in part on the earnings, and such benefits range in amounts from \$480 to \$4,000, it is impossible to compute the cost of the 271 accidents from the information at hand.

Replies from several manufacturers indicate that they have been unable to obtain from their insurance companies, information in regard to actual amount of payments made to their employes by the insurance companies.

(G) DO YOU BELONG TO ANY MUTUAL INSURANCE ASSOCIATION?

1. If so, please advise results.
2. Are you operating under state law? If so, please favor us with an expression of your opinion in regard to it.

Replies received from 176, or 88 per cent of the 200 inquiries sent out.

It should be explained that the above inquiry had reference to local mutual insurance associations, organized by the manufacturers in their respective localities.

Six, or less than $3\frac{1}{2}$ per cent of all who replied, belong to local mutual insurance associations.

1. All companies belonging to mutual insurance associations, report results as satisfactory.
2. All but one of them are operating under state law.

Their opinions, as expressed in relation to state laws, are in part as follows:

Members working under New York law report it as being favorable, while other New York members say their compulsory liability law is only partially satisfactory. They do not think the employer gets a square deal.

The Illinois law, which requires that accidents be reported to the state, is said by some members from that state to be satisfactory when they experience no serious complications to be reported.

The New Jersey members reporting say they consider the state law unjust and very imperfect.

Much information may be obtained from the replies and suggestions received from these 200 manufacturing companies. First, that they reveal the usual display of diverse opinions to be expected from such a large number of dissimilar institutions, located in so many different sections, established among different environments, each company with its personnel and characteristics peculiar to itself, kind and locality, all of which help to establish their basis of thought and influence their conclusions.

One important lesson is, that many manufacturers are not giving due consideration to the first of the subjects treated herein. That is, they are not providing newer and better methods for the protection of themselves and their employes.

Many appear to adopt such methods as are recommended by the insurance companies, or their inspectors. Others, only such as are prescribed by local ordinances, or state laws, for the prevention of accidents, and endeavor to protect themselves against pecuniary losses by liability or other forms of insurance, devised for similar purposes. Some, however, are working along newer and broader lines, employing methods which conservation and experiments have shown to operate for the mutual good of the employe and employer, both sharing in the costs of the systems they adopt.

Some manufacturers have not kept any records of accidents in their factories; others, only records of reports of accidents sent to the insurance companies, and few of such companies have accurate, if any records of cost pertaining to accidents. This is especially true of those manufacturers buying insurance protection.

Barring extraordinary accidents, it should be as easy for a manufacturer to tabulate such records, or keep an accurate account of the amount of their contributions to an employes' benefit insurance system, as to figure his factory overhead costs.

MEMBERSHIP AND EMPLOYES' BENEFIT INSURANCE ASSOCIATIONS.

One of our members says:

It does not seem reasonable to expect an employe to accept with very good grace an arbitrary decision that he must become a member of a certain organization, in subscribing to which he has but two courses of action, in case of accident; that is, either to accept the award of the association of which he is a member, or have recourse to the courts; but if membership is optional with him, he may be justly and successfully taught that by his membership he helps to complete a benevolent entity, of which he is an integral part, assuming his share of the moral and financial obligations of an association, a large percentage of the benefits of which accrue to him or those who may be dependent upon him.

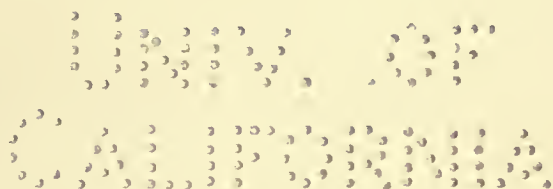
It will be noted from the answers to question "6," that where membership is voluntary, only 57 per cent of the employes join, and it is very common in case of accident or sickness to an employe who is not a member to have a subscription paper passed around in the shop. This is very unsatisfactory and unfair to the men who are paying dues to the insurance association. Compulsory payment, by bringing in all the men, makes the cost per man very much less and enables the association to extend the benefits.

It is suggested, as the belief of one manufacturer, that the whole employer's liability agitation is a direct movement toward socialism. If this be true, it is high time that all employers of labor were co-operating in a general effort to formulate some uniform policy or system, which shall be elastic enough to operate equally well for all manufacturers, large and small, and so safeguard and protect the mutual interests of employer and employe, as to satisfy both.

It is suggested that the general government should support a needy, disabled or infirm employe, because such burdens should be borne by the public and not by employers.

No method has been so productive of good, no charity so kind or helpful as that of "helping others to help themselves,"

and this should be one of the basic principles employed in the working out of this problem. A very few people willingly become subjects of charity and most of them rather give, than receive alms. It seems reasonable to assume that a system for the maintenance and operation of which both employers and employes should contribute their proportional part of the cost, labor and responsibility could be devised.



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